

designation of a presiding officer of the board after that person's term as presiding officer expires.

SECTION 24. The change in law made by Subchapter C-1, Chapter 1151, Occupations Code, as added by this Act, relating to the investigation of a complaint applies only to a complaint filed with the Board of Tax Professional Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 25. Before January 1, 2004, the Board of Tax Professional Examiners shall adopt the rules required by Subsection (a), Section 1151.161, Occupations Code, as amended by this Act.

SECTION 26. Before January 1, 2004, the Board of Tax Professional Examiners by rule shall adopt the written guidelines required by Section 1151.202, Occupations Code, as amended by this Act.

SECTION 27. This Act takes effect September 1, 2003.

Passed the Senate on April 3, 2003: Yeas 31, Nays 0; passed the House on May 20, 2003, by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 816

S.B. No. 279

AN ACT

relating to the continuation and functions of the Texas Department of Licensing and Regulation, including certain functions transferred to the department from the Department of Agriculture and including certain functions transferred from the department to the Department of Public Safety of the State of Texas; the financial responsibilities of valet parking services; and the powers and duties of the Department of Information Resources and the licensing authorities of this state regarding on-line license information; providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.001. Section 51.002, Occupations Code, is amended to read as follows:

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2015 [2003].

SECTION 1.002. Subchapter A, Chapter 51, Occupations Code, is amended by adding Section 51.003 to read as follows:

Sec. 51.003. APPLICABILITY. *This chapter applies to each regulatory program administered by the department, including any program under which a license is issued by the department.*

SECTION 1.003. Subsection (a), Section 51.052, Occupations Code, is amended to read as follows:

(a) The commission consists of *seven* [six] members appointed by the governor with the advice and consent of the senate.

SECTION 1.004. Subsection (b), Section 51.053, Occupations Code, is amended to read as follows:

(b) A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

- (1) is regulated by the department;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department;
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or
- (5) ~~[is an officer, employee, or paid consultant of a trade association in a field regulated by the department;~~
- ~~[(6)] is an employee of the department[; or~~
- ~~[(7) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission or department].~~

SECTION 1.005. Subchapter B, Chapter 51, Occupations Code, is amended by adding Section 51.0535 to read as follows:

Sec. 51.0535. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the department; or*
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the department.*

(c) A person may not be a member of the commission or act as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

SECTION 1.006. Subchapter B, Chapter 51, Occupations Code, is amended by adding Section 51.054 to read as follows:

Sec. 51.054. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the department and the commission;*
- (2) the programs operated by the department;*
- (3) the role and functions of the department;*
- (4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;*
- (5) the current budget for the department;*
- (6) the results of the most recent formal audit of the department;*
- (7) the requirements of:*
 - (A) the open meetings law, Chapter 551, Government Code;*
 - (B) the public information law, Chapter 552, Government Code;*

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.007. Subsection (a), Section 51.055, Occupations Code, is amended to read as follows:

(a) Members of the commission serve staggered six-year terms. The terms of one or two members expire on February 1 of each odd-numbered year.

SECTION 1.008. Subsection (a), Section 51.056, Occupations Code, is amended to read as follows:

(a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor ~~[commission shall elect one of its members as presiding officer. The presiding officer serves in that capacity for a period of two years].~~

SECTION 1.009. Subsections (a) and (c), Section 51.057, Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the commission that a member:

(1) does not have at the time of *taking office* ~~[appointment]~~ the qualifications required by Section 51.053 ~~[for appointment to the commission];~~

(2) does not maintain during service on the commission the qualifications required by Section 51.053 ~~[for appointment to the commission];~~

(3) is ineligible for membership under ~~[violates a prohibition established by]~~ Section 51.0535 ~~[51.053]; [or]~~

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year *without an excuse approved* ~~[unless the absence is excused]~~ by a majority vote of the commission.

(c) If ~~[a commission member or]~~ the executive director has knowledge that a potential ground for removal exists, the ~~[member or]~~ executive director shall notify the presiding officer of the commission of the *potential* ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. *If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.*

SECTION 1.010. Section 51.105, Occupations Code, is amended to read as follows:

Sec. 51.105. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly *separate the policy-making* ~~[define the respective]~~ responsibilities of the commission and the management responsibilities of¹ the executive director¹ and the staff of the department.

SECTION 1.011. Subchapter C, Chapter 51, Occupations Code, is amended by adding Section 51.106 to read as follows:

Sec. 51.106. INFORMATION ON STANDARDS OF CONDUCT. *The executive director or the executive director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

SECTION 1.012. Section 51.108, Occupations Code, is amended to read as follows:

Sec. 51.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director *or the executive director's designee* shall prepare and maintain a written policy statement *that implements a program of* ~~[to assure implementation of an]~~ equal employment opportunity *to ensure that* ~~[program under which]~~ all personnel *decisions* ~~[transactions]~~ are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) *personnel policies, including policies relating* ~~[related]~~ to recruitment, evaluation, selection, ~~[appointment,]~~ training, and promotion of personnel, *that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and*

(2) *an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law* ~~[a comprehensive analysis of the department workforce that meets federal and state guidelines;~~

~~[(3) procedures by which a determination can be made of significant underuse in the department workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address those areas of significant underuse].~~

(c) The ~~[(b) A]~~ policy statement ~~[prepared under Subsection (a)]~~ must:

(1) ~~[cover an annual period,]~~ be updated ~~[at least]~~ annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1);¹ and

(3) be filed with the governor's office ~~[governor]~~.

SECTION 1.013. Subchapter C, Chapter 51, Occupations Code, is amended by adding Section 51.109 to read as follows:

Sec. 51.109. STATE EMPLOYEE INCENTIVE PROGRAM. *The executive director or the executive director's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.*

SECTION 1.014. Sections 51.203 and 51.204, Occupations Code, are amended to read as follows:

Sec. 51.203. RULES REGARDING PROGRAMS REGULATED BY DEPARTMENT ~~[ADOPTED BY EXECUTIVE DIRECTOR]~~. The *commission* ~~[executive director]~~ shall adopt rules as necessary to implement each law establishing a program regulated by the department.

Sec. 51.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The *commission* ~~[executive director]~~ may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The *commission* ~~[executive director]~~ may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement; or

(4) restricts the use of a trade name in advertising.

SECTION 1.015. Subchapter D, Chapter 51, Occupations Code, is amended by adding Sections 51.207 and 51.208 to read as follows:

Sec. 51.207. USE OF TECHNOLOGY. *The commission shall develop and implement a policy requiring the executive director and department employees to research and propose appropriate technological solutions to improve the department's ability to perform its functions. The technological solutions must:*

(1) *ensure that the public is able to easily find information about the department on the Internet;*

(2) *ensure that persons who want to use the department's services are able to:*

(A) *interact with the department through the Internet; and*

(B) *access any service that can be provided effectively through the Internet; and*

(3) *be cost-effective and developed through the department's planning processes.*

Sec. 51.208. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) *The commission shall develop and implement a policy to encourage the use of:*

(1) *negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and*

(2) *appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.*

(b) *The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.*

(c) *The commission shall designate a trained person to:*

(1) *coordinate the implementation of the policy adopted under Subsection (a);*

(2) *serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and*

(3) *collect data concerning the effectiveness of those procedures, as implemented by the department.*

SECTION 1.016. Section 51.252, Occupations Code, is amended to read as follows:

Sec. 51.252. COMPLAINTS. (a) *The executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.*

(b) *The department shall maintain a [keep an information] file on [about] each written complaint filed with the department [that the commission or executive director has authority to resolve]. The file must include:*

(1) *the name of the person who filed the complaint;*

(2) *the date the complaint is received by the department;*

(3) *the subject matter of the complaint;*

(4) *the name of each person contacted in relation to the complaint;*

(5) *a summary of the results of the review or investigation of the complaint; and*

(6) *an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.*

(c) *The [If a written complaint is filed that the commission or executive director has authority to resolve, the] department, at least quarterly and until final disposition of the complaint, shall notify the person filing [parties to] the complaint and each person who is a subject of the complaint of the status of the investigation [complaint] unless the notice would jeopardize an undercover investigation.*

(d) *The commission shall adopt a procedure for documenting complaints to the department from the time of the submission of the initial complaint to the final disposition of the complaint. The commission shall publish the procedure in the Texas Register.*

SECTION 1.017. Section 51.302, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.

SECTION 1.018. Section 51.353, Occupations Code, is amended to read as follows:

Sec. 51.353. ADMINISTRATIVE SANCTIONS. (a) *The commission shall revoke, suspend, or refuse to renew a license or shall reprimand a license holder for a violation of this chapter, [executive director shall adopt rules relating to administrative sanctions that may be enforced against a license holder regulated by the department. If a license holder violates] a law establishing a regulatory program administered by the department, or a rule or order of the commission [or executive director, the executive director may:*

[(1) issue a written reprimand to the license holder;

[(2) revoke or suspend the license holder's license; or

[(3) place the license holder on probation if the person's license has been suspended].

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission [executive director] may require the person [license holder] to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission [executive director]; or

(3) continue or renew professional education [in those areas that are the basis for the probation] until the person [license holder] attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation [executive director].

SECTION 1.019. Chapter 51, Occupations Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 51.401. LICENSE EXPIRATION AND RENEWAL. (a) *A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.*

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-½ times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Sec. 51.402. EXAMINATIONS. (a) *Not later than the 30th day after the date a person takes a license examination, the department shall notify the person of the results of the examination.*

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a license examination, the department shall furnish the person with an analysis of the person's performance on the examination.

Sec. 51.403. **EXAMINATION FEE REFUND.** (a) The department may refund a license examination fee to a person who is unable to take the examination if the person:

(1) provides reasonable advance notice to the department; or

(2) cannot take the examination because of an emergency.

(b) The commission by rule shall define what constitutes reasonable notice and an emergency under this section.

Sec. 51.404. **ENDORSEMENT; RECIPROCITY.** (a) The commission may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The commission may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Sec. 51.405. **CONTINUING EDUCATION.** The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license.

SECTION 1.020. Section 51.205, Occupations Code, is renumbered as Section 51.406, Occupations Code, and amended to read as follows:

Sec. 51.406 [51.205]. **~~STAGGERED [LICENSE EXPIRATION AND] RENEWAL OF LICENSES.~~** [(a)] The commission by rule [executive director] may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable [annually and may provide for a renewal period that exceeds 12 months].

[(b) The executive director shall notify a person regulated by the department of the impending expiration of the person's license].

SECTION 1.021. Chapter 51, Occupations Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM

Sec. 51.451. **DEFINITION.** In this subchapter, "licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

Sec. 51.452. **TELEPHONE INFORMATION SYSTEM.** The department shall establish and operate a toll-free telephone information system to provide assistance and referral services for persons who inquire about a program regulated by a licensing entity.

SECTION 1.022. (a) The changes in law made by this article in the prohibitions or qualifications applying to members of the Texas Commission of Licensing and Regulation do not affect the entitlement of a member serving on the commission immediately before

September 1, 2003, to continue to serve and function as a member of the commission for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(b) Not later than November 1, 2003, the governor shall appoint an additional member to serve on the Texas Commission of Licensing and Regulation, as required by Subsection (a), Section 51.052, Occupations Code, as amended by this article. The new member's term shall expire on February 1, 2007.

SECTION 1.023. Not later than September 1, 2004, the Texas Department of Licensing and Regulation shall implement the toll-free telephone information system required by Section 51.452, Occupations Code, as added by this article.

SECTION 1.024. (a) In this section:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

(3) "TexasOnline" means the project implemented under Subchapter I, Chapter 2054, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

(b) Not later than March 1, 2004, the department shall identify licensing entities that do not use TexasOnline.

(c) Not later than September 1, 2004, the department shall assist those entities to develop websites for, and to convert to, TexasOnline.

(d) Licensing entities shall cooperate with the department to implement this section.

SECTION 1.025. Not later than March 1, 2004, the Texas Commission of Licensing and Regulation shall adopt the rules required by Subsection (c), Section 51.302, Occupations Code, as added by this article.

SECTION 1.026. Subsection (c), Section 51.053, Occupations Code, is repealed.

SECTION 1.027. Section 51.252, Occupations Code, as amended by this article, takes effect January 1, 2004.

ARTICLE 2. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

SECTION 2.001. Section 1302.002, Occupations Code, is amended by amending Subdivision (5) and adding Subdivision (11-a) to read as follows:

(5) "Air conditioning and refrigeration maintenance work" means all work, including repair work, required for the continued normal performance of an environmental air conditioning system, a process cooling or heating system, a commercial refrigeration system, or commercial refrigeration equipment. The term does not include:

(A) the total replacement of a system; or

(B) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted by the *commission* [~~commissioner~~] under Chapter 755, Health and Safety Code.

(11-a) "*Executive director*" means the executive director of the department.

SECTION 2.002. The heading to Subchapter C, Chapter 1302, Occupations Code, is amended to read as follows:

SUBCHAPTER C. [~~COMMISSIONER AND DEPARTMENT~~] POWERS AND DUTIES

SECTION 2.003. Section 1302.101, Occupations Code, is amended to conform to Section 2, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, and is further amended to read as follows:

Sec. 1302.101. GENERAL POWERS AND DUTIES [~~OF COMMISSIONER~~]. (a) The *commission* [~~commissioner~~] shall:

[(1)] adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by:

- (1) ~~[(A)]~~ the Uniform Mechanical Code ~~[published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, as that code exists at the time the rules are adopted]; and [or]~~
- (2) ~~[(B)]~~ the *International* ~~[Standard]~~ Mechanical Code.
- (b) *The executive director shall* ~~[published by the Southern Building Code Congress International, Inc., as that code exists at the time the rules are adopted];~~
- ~~[(2)]~~ prescribe the design of an original and a renewal license.
- (c) *The commission shall*; ~~and~~
- ~~[(3)]~~ maintain a record of the *commission's* ~~[commissioner's]~~ proceedings under this chapter.
- (d) ~~[(b)]~~ The *executive director* ~~[commissioner]~~ may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

SECTION 2.004. Section 1302.103, Occupations Code, is amended to read as follows:

Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE. The *commission* ~~[commissioner]~~, with the advice of the advisory board, shall adopt rules relating to the use, display, and advertisement of a license.

SECTION 2.005. Section 1302.201, Occupations Code, is amended to read as follows:

Sec. 1302.201. ADVISORY BOARD MEMBERSHIP. The air conditioning and refrigeration contractors advisory board consists of six members appointed by the *presiding officer of the commission, with the commission's approval*, ~~[governor with the advice and consent of the senate]~~ and two ex officio nonvoting members.

SECTION 2.006. Subsection (a), Section 1302.204, Occupations Code, is amended to read as follows:

(a) The advisory board shall advise the *commission* ~~[commissioner]~~ in adopting rules and in administering and enforcing this chapter.

SECTION 2.007. Subsection (b), Section 1302.205, Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during an appointed member's term, the *presiding officer of the commission, with the commission's approval*, ~~[governor]~~ shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

SECTION 2.008. Section 1302.206, Occupations Code, is amended to read as follows:

Sec. 1302.206. PRESIDING OFFICER. The *presiding officer of the commission, with the commission's approval*, ~~[governor]~~ shall designate one member of the advisory board to serve as presiding officer *of the board for two years*.

SECTION 2.009. Section 1302.261, Occupations Code, is amended to read as follows:

Sec. 1302.261. TEMPORARY LICENSE. The *commission* ~~[commissioner]~~ by rule may provide for the issuance of a temporary air conditioning and refrigeration contracting license to an applicant who:

- (1) submits to the *executive director* ~~[commissioner]~~ an application on a form prescribed by the *executive director* ~~[commissioner]~~; and
- (2) pays the required fees.

SECTION 2.010. Subsection (b), Section 1302.354, Occupations Code, is amended to read as follows:

(b) The *commission* ~~[commissioner]~~ by rule shall adopt requirements governing the registration and issuance of a certificate of registration.

SECTION 2.011. Subsection (c), Section 1302.355, Occupations Code, is amended to read as follows:

(c) The *commission* ~~[commissioner]~~ by rule shall establish requirements for evidence that satisfies this section.

SECTION 2.012. The following laws are repealed:

- (1) Subdivision (8), Section 1302.002, Occupations Code;
- (2) Section 1302.107, Occupations Code;
- (3) Section 1302.152, Occupations Code;
- (4) Section 1302.258, Occupations Code;
- (5) Section 1302.259, Occupations Code; and
- (6) Chapter 790, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2.013. The changes in law made by this article applying to members of the air conditioning and refrigeration contractors advisory board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 3. ARCHITECTURAL BARRIERS

SECTION 3.001. Section 2, Article 9102, Revised Statutes, is amended by adding Subsection (h) to read as follows:

(h) If any portion of a building described by Subsection (a)(1) of this section is occupied solely for residential use and the remaining occupied portion of the building is occupied for nonresidential use, the executive director shall consider only the nonresidential portion of the building in determining whether the building complies with the standards and specifications adopted under this article.

SECTION 3.002. Section 4, Article 9102, Revised Statutes, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Executive director" means the executive director of the department.

SECTION 3.003. Article 9102, Revised Statutes, is amended by adding Section 4A to read as follows:

Sec. 4A. APPLICABILITY OF OTHER LAW. Section 51.404, Occupations Code, does not apply to this article.

SECTION 3.004. Subsections (c) through (h) and (j), Section 5A, Article 9102, Revised Statutes, are amended to read as follows:

(c) An applicant for a certificate of registration must file with the commission an application on a form prescribed by the *executive director* ~~[commissioner]~~.

(d) To be eligible for a certificate of registration, an applicant must satisfy any requirements adopted by the *commission* ~~[commissioner]~~ by rule, including education and examination requirements.

(e) The *executive director* ~~[commissioner]~~ may issue a certificate of registration to perform review functions of the commission, inspection functions of the commission, or both review and inspection functions.

(f) The *executive director* ~~[commissioner]~~ may administer separate examinations for applicants for certificates of registration to perform review functions, inspection functions, or both review and inspection functions. ~~[Not later than the 30th day after the examination date, the commissioner shall notify each examinee of the results of the examination.]~~

(g) The *executive director* ~~[commissioner]~~ shall issue an appropriate certificate of registration to an applicant who meets the requirements for a certificate.

(h) The *commission* ~~[commissioner]~~ by rule shall specify the term of a certificate of registration issued under this section.

(j) A certificate holder shall perform a review or inspection function of the commission in a competent and professional manner and in compliance with:

- (1) standards and specifications adopted by the commission under this article; and
- (2) rules adopted by the *commission* ~~[commissioner]~~ under this article.

SECTION 3.005. Section 7, Article 9102, Revised Statutes, is amended to read as follows:

Sec. 7. *ADVISORY COMMITTEE; REVIEW OF AND COMMENT ON RULES.* (a) The *presiding officer of the commission, with the commission's approval*, shall appoint an advisory committee for the architectural barriers program. The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall be composed of at least eight members. Persons with disabilities must make up a majority of the membership.

(b) A committee member serves at the will of the *presiding officer of the commission*. A member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(c) The *presiding officer of the commission, with the commission's approval*, ~~[committee]~~ shall *appoint* ~~[elect]~~ a member of the committee as chair *for two years*. The committee shall meet at least twice each calendar year at the call of the committee chair or at the call of the *commission* ~~[commissioner]~~.

(d) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission ~~[and the commissioner]~~. The commission shall submit all proposed changes to rules and procedures that relate to the architectural barriers program to the committee for review and comment before adoption or implementation of the new or amended rule or procedure.

SECTION 3.006. Article 9102, Revised Statutes, is amended by adding Section 9 to read as follows:

Sec. 9. *COMPLAINTS.* (a) *The department shall continue to monitor a complaint made under Section 51.252, Occupations Code, that alleges that a building or facility is not in compliance with the standards and specifications adopted by the commission under this article until the department determines that:*

(1) *the building or facility has been brought into compliance; or*

(2) *the building or facility is not required to be brought into compliance because of a rule or statute, including Section 2(c) of this article.*

(b) *If the building or facility is not required to be brought into compliance, the department shall, on final disposition of the complaint, notify in writing the person filing the complaint that the building or facility is not required to be brought into compliance because of a rule or statute and provide a reference to the rule or statute.*

(c) *The department, at least quarterly and for as long as the department continues to monitor the complaint under Subsection (a) of this section, shall notify the person filing the complaint of the status of the monitoring.*

SECTION 3.007. The following laws are repealed:

(1) Subdivision (3), Section 4, Article 9102, Revised Statutes; and

(2) Subsection (i), Section 5A, Article 9102, Revised Statutes.

SECTION 3.008. The changes in law made by this article applying to members of the advisory committee for the program for the elimination of architectural barriers do not affect the entitlement of a member serving on the committee immediately before September 1, 2003, to continue to serve and function as a member of the committee for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 4. AUCTIONEERS

SECTION 4.001. Section 1802.001, Occupations Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) *"Executive director" means the executive director of the department.*

SECTION 4.002. Subsections (a), (b), and (d), Section 1802.059, Occupations Code, are amended to read as follows:

(a) An applicant for an auctioneer's license who is not a resident of this state but is licensed as an auctioneer in another state must submit to the *executive director* ~~[commissioner]~~:

- (1) a license application;
 - (2) a certified copy of the auctioneer's license issued to the applicant by the state or political subdivision in which the applicant resides; and
 - (3) proof that the state or political subdivision in which the applicant is licensed has competency standards equivalent to or stricter than those of this state.
- (b) The *executive director* ~~[commissioner]~~ shall accept the applicant's auctioneer's license submitted under Subsection (a)(2) as proof of the applicant's professional competence and waive the examination and training requirements of Section 1802.052 if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

(d) A nonresident applicant must submit with the application a written irrevocable consent to service of process. The consent must be in the form and supported by additional information that the *commission* ~~[commissioner]~~ by rule requires. The consent must:

- (1) provide that an action relating to any transaction subject to this chapter may be commenced against the license holder in the proper court of any county of this state in which the cause of action may arise or in which the plaintiff may reside by service of process on the *executive director* ~~[commissioner]~~ as the license holder's agent; and
- (2) include a statement stipulating and agreeing that service provided by this section is as valid and binding as if service had been made on the person according to the laws of this or any other state.

SECTION 4.003. Section 1802.101, Occupations Code, is amended to read as follows:

Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The advisory board shall advise the *commission* ~~[commissioner]~~ on educational matters.

SECTION 4.004. Subsections (a) and (b), Section 1802.102, Occupations Code, are amended to read as follows:

(a) The advisory board consists of five members appointed as follows:

- (1) three members who are licensed auctioneers appointed by the *presiding officer of the commission, with the commission's approval* ~~[commissioner]~~;
- (2) the executive director of the Texas Department of Economic Development or the director's designee; and
- (3) the commissioner of education or the commissioner's designee.

(b) In appointing advisory board members under Subsection (a)(1), the *presiding officer of the commission* ~~[commissioner]~~ may not appoint members who reside in contiguous senatorial districts.

SECTION 4.005. Subsection (a), Section 1802.103, Occupations Code, is amended to read as follows:

(a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1. If a vacancy occurs during the term of such a member, the *presiding officer of the commission, with the commission's approval*, ~~[commissioner]~~ shall appoint a replacement to serve for the remainder of the term.

SECTION 4.006. Section 1802.104, Occupations Code, is amended to read as follows:

Sec. 1802.104. PRESIDING OFFICER. The *presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve* ~~[shall designate one of its members]~~ as presiding officer of the board. The presiding officer serves for two years.

SECTION 4.007. Section 1802.109, Occupations Code, is amended to read as follows:

Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The advisory board shall:

- (1) evaluate educational programs, seminars, and training projects; and
- (2) make recommendations to the *commission* ~~[commissioner]~~ on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the *commission* [commissioner] may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

SECTION 4.008. Subsection (a), Section 1802.153, Occupations Code, is amended to read as follows:

(a) In addition to any other fees required by this chapter, an applicant entitled to receive a license under this chapter must pay a fee [of \$100] before the *executive director* [commissioner] issues the license.

SECTION 4.009. Section 1802.201, Occupations Code, is amended to read as follows:

Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The *executive director* [commissioner] may, on the *executive director's* [commissioner's] motion, and shall, on the written [and verified] complaint of a person aggrieved by the actions of an auctioneer in an auction, investigate an alleged violation of this chapter by a licensed or unlicensed auctioneer or an applicant.

SECTION 4.010. Subsections (a) and (b), Section 1802.202, Occupations Code, are amended to read as follows:

(a) A person who deals with an auctioneer licensed under this chapter and who is aggrieved by an action of the auctioneer as a result of a violation of a contract made with the auctioneer may initiate a claim against the fund by:

[(4) filing with the department a [sworn] complaint against the auctioneer; and

[(2) paying to the department a filing fee of \$50].

(b) The *executive director* [commissioner] may not pay a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

SECTION 4.011. Subsection (c), Section 1802.203, Occupations Code, is amended to read as follows:

(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the *commission* [commissioner].

SECTION 4.012. Section 1802.204, Occupations Code, is amended to read as follows:

Sec. 1802.204. APPEAL. A party may appeal a decision of the *commission* [commissioner] in the manner provided for a contested case under Chapter 2001, Government Code.

SECTION 4.013. Section 1802.207, Occupations Code, is amended to read as follows:

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the *executive director* [commissioner] pays a claim against an auctioneer, the auctioneer shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the *commission* [commissioner]; and

(2) immediately pay the aggrieved party any amount due to that party or agree in writing to pay the party on a schedule to be determined by rule of the *commission* [commissioner].

(b) Payments made by an auctioneer to the fund or to an aggrieved party under this section include interest accruing at the rate of eight percent a year beginning on the date the *executive director* [commissioner] pays the claim.

SECTION 4.014. Subsection (a), Section 1802.209, Occupations Code, is amended to read as follows:

(a) This subchapter and Section 1802.252 do not limit the *commission's* [commissioner's] authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

SECTION 4.015. Section 1802.251, Occupations Code, is amended to read as follows:

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The *commission* [commissioner] may deny an application for a license or suspend or revoke the license of any auctioneer for:

(1) violating this chapter or a rule adopted under this chapter;

(2) obtaining a license through false or fraudulent representation;

- (3) making a substantial misrepresentation in an application for an auctioneer's license;
- (4) engaging in a continued and flagrant course of misrepresentation or making false promises through an agent, advertising, or otherwise;
- (5) failing to account for or remit, within a reasonable time, money belonging to another that is in the auctioneer's possession and commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account; or
- (6) ~~[being convicted in a court of this state or another state of a criminal offense involving moral turpitude or a felony; or~~
- ~~[(7)]~~ violating the Business & Commerce Code in conducting an auction.

SECTION 4.016. Section 1802.252, Occupations Code, is amended to read as follows:

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The *commission* ~~[commissioner]~~ may revoke a license issued under this chapter if the *executive director* ~~[commissioner]~~ makes a payment from the fund as the result of an action of the license holder.

(b) The *commission* ~~[commissioner]~~ may probate an order revoking a license.

(c) An auctioneer is not eligible for a new license until the auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest, unless:

- (1) a hearing is held; and
- (2) the *executive director* ~~[commissioner]~~ issues a new probated license.

SECTION 4.017. Section 1802.253, Occupations Code, is amended to read as follows:

Sec. 1802.253. HEARING. (a) Before denying an application for a license ~~[or suspending or revoking a license]~~, the *commission* ~~[commissioner]~~ shall:

- (1) set the matter for a hearing; and
- (2) before the ~~[30th day before the]~~ hearing date, notify the applicant ~~[or license holder]~~ in writing of:
 - (A) the charges alleged or the question to be determined at the hearing; and
 - (B) the date and location of the hearing.

(b) At a hearing under this section, the applicant ~~[or license holder]~~ may:

- (1) be present and be heard in person or by counsel; and
- (2) have an opportunity to offer evidence by oral testimony, affidavit, or deposition.

(c) Written notice may be served by personal delivery to the applicant ~~[or license holder]~~ or by certified mail to the last known mailing address of the applicant ~~[or license holder]~~.

(d) If the applicant ~~[or license holder]~~ who is the subject of the hearing is an associate auctioneer, the *commission* ~~[commissioner]~~ shall provide written notice to the auctioneer who employs the associate auctioneer or who has agreed to employ the associate auctioneer by mailing the notice by certified mail to the auctioneer's last known mailing address.

SECTION 4.018. Subsection (a), Section 1802.303, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person violates a provision of this chapter or a rule adopted by the *commission* ~~[commissioner]~~ under this chapter for which a penalty is not provided.

SECTION 4.019. The following laws are repealed:

- (1) Subdivision (7), Section 1802.001, Occupations Code;
- (2) Section 1802.057, Occupations Code;
- (3) Section 1802.061, Occupations Code; and
- (4) Section 1802.254, Occupations Code.

SECTION 4.020. The changes in law made by this article applying to members of the Auctioneer Education Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 5. BOILERS

SECTION 5.001. Section 755.001, Health and Safety Code, is amended by amending Subdivisions (5), (6), and (23) and adding Subdivision (7-a) to read as follows:

(5) "Certificate of operation" means a certificate issued by the *executive director* [~~commissioner~~] to allow the operation of a boiler.

(6) "*Commission*" [~~"Commissioner"~~] means the *Texas Commission of Licensing and Regulation* [~~commissioner of licensing and regulation~~].

(7-a) "*Executive director*" means the executive director of the department.

(23) "Standard boiler" means a boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the *executive director* [~~commissioner~~].

SECTION 5.002. Subsections (b) and (d), Section 755.011, Health and Safety Code, are amended to read as follows:

(b) The board is composed of the following nine members appointed by the *presiding officer of the commission*, with the commission's approval [~~commissioner~~]:

- (1) three members representing persons who own or use boilers in this state;
- (2) three members representing companies that insure boilers in this state;
- (3) one member representing boiler manufacturers or installers;
- (4) one member who is a mechanical engineer and a member of the faculty of a recognized college of engineering in this state; and
- (5) one member representing a labor union.

(d) The *executive director* [~~commissioner~~] serves as an ex officio board member.

SECTION 5.003. Section 755.013, Health and Safety Code, is amended to read as follows:

Sec. 755.013. *PRESIDING OFFICER* [~~CHAIRMAN~~]. The chief inspector serves as *presiding officer* [~~chairman~~] of the board.

SECTION 5.004. Section 755.014, Health and Safety Code, is amended to read as follows:

Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The *commission* [~~commissioner~~] may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The *presiding officer of the commission* [~~commissioner~~] shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

SECTION 5.005. Section 755.016, Health and Safety Code, is amended to read as follows:

Sec. 755.016. MEETINGS. The board shall meet at least twice each year at the call of the *presiding officer* [~~chairman~~] at a place designated by the board.

SECTION 5.006. Section 755.017, Health and Safety Code, is amended to read as follows:

Sec. 755.017. POWERS AND DUTIES. The board shall advise the *commission* [~~commissioner~~] in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

SECTION 5.007. Subsection (a), Section 755.030, Health and Safety Code, is amended to read as follows:

(a) In addition to the fees described by Section 51.202, Occupations Code, the commission may authorize the collection of fees for:

- (1) boiler inspections, including fees for special inspections; and
- (2) other activities administered by the boiler inspection section and authorized by rule of the *commission* [~~executive director of the department~~].

SECTION 5.008. Section 755.032, Health and Safety Code, is amended to read as follows:

Sec. 755.032. RULES. (a) The *commission* [~~commissioner~~] may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

(b) The *executive director* [~~commissioner~~] may exchange information, including data on experience, with other authorities that inspect boilers or their appurtenances, to obtain information necessary to adopt rules.

(c) The *executive director* [~~commissioner~~] or a department employee may not prescribe the make, brand, or kind of boilers or any appurtenances on the boiler to purchase.

(d) The *executive director* [~~commissioner~~] or a department employee may not prescribe the make, brand, or kind of boilers to purchase.

SECTION 5.009. Section 755.033, Health and Safety Code, is amended to read as follows:

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The *executive director* [~~commissioner~~] shall enter into interagency agreements with the Texas Department of Health, the Texas Commission on Fire Protection, and the *Texas Department* [~~State Board~~] of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the *executive director* [~~commissioner~~].

(b) The *executive director* [~~commissioner~~] may enter into analogous agreements with local fire marshals.

(c) The *commission* [~~commissioner~~] shall adopt rules relating to the terms and conditions of an interagency agreement entered into under this section.

SECTION 5.010. Subsections (b) and (d), Section 755.041, Health and Safety Code, are amended to read as follows:

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the *executive director* [~~commissioner~~] to show cause for not enforcing the preliminary order. If, after the hearing, the *executive director* [~~commissioner~~] determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the *executive director* [~~commissioner~~] may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(d) This section does not limit the *executive director's* [~~commissioner's~~] authority under Section 755.028 or the *commission's* authority under Section 755.032.

SECTION 5.011. Subsection (a), Section 755.043, Health and Safety Code, is amended to read as follows:

(a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the *commission*, the *executive director*, [~~commissioner~~] or a regularly employed inspector authorized to enforce this chapter and rules and orders.

SECTION 5.012. Section 755.045, Health and Safety Code, is amended to read as follows:

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the *commission* [~~commissioner~~] gives notice of the rule or order.

SECTION 5.013. Section 755.046, Health and Safety Code, is amended to read as follows:

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the *commission* or the *executive director* [~~commissioner~~] and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

- (1) is issued under the seal of the *commission or the executive director* [~~commissioner~~];
- (2) is executed by the *commission, the executive director* [~~commissioner~~], the chief inspector, or a deputy inspector;
- (3) states the terms of the order;
- (4) states that the order was issued and published; and
- (5) states that the order was in effect during the period specified by the affidavit.

SECTION 5.014. The following laws are repealed:

- (1) Subsections (c), (d), (e), and (h), Section 755.024, Health and Safety Code; and
- (2) Section 755.031, Health and Safety Code.

SECTION 5.015. The changes in law made by this article applying to members of the board of boiler rules do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 6. CAREER COUNSELING SERVICES

SECTION 6.001. Section 2502.001, Occupations Code, is amended by amending Subdivision (3) and adding Subdivision (4-a) to read as follows:

(3) "*Commission*" [~~"Commissioner"~~] means the *Texas Commission of Licensing and Regulation* [~~commissioner of licensing and regulation~~].

(4-a) "*Executive director*" means the executive director of the department.

SECTION 6.002. Section 2502.056, Occupations Code, is amended to read as follows:

Sec. 2502.056. RULES. The *commission* [~~commissioner~~] may adopt rules relating to the administration and enforcement of the certificate of authority program created under this subchapter.

SECTION 6.003. Subchapter B, Chapter 2502, Occupations Code, is amended by adding Section 2502.058 to read as follows:

Sec. 2502.058. APPLICABILITY OF OTHER LAW. Section 51.404 does not apply to this chapter.

SECTION 6.004. Subsection (b), Section 2502.202, Occupations Code, is amended to read as follows:

(b) Not later than *10 days* [~~48 hours~~] after a career counseling service receives a written complaint, the service shall respond to the complaint. Not later than the *30th* [~~10th~~] day after the date the complaint is received, the service shall resolve the complaint.

SECTION 6.005. Subsection (a), Section 2502.203, Occupations Code, is amended to read as follows:

(a) If a career counseling service cannot resolve a complaint within the period described by Section 2502.202, the service shall:

- (1) refer the complaint to a qualified independent arbitration organization recognized by the department; and
- (2) resolve the complaint not later than the *60th* [~~30th~~] day after the date the *arbitration begins* [~~complaint is referred for arbitration~~].

SECTION 6.006. Section 2502.252, Occupations Code, is amended to read as follows:

Sec. 2502.252. COMPLAINT AND INVESTIGATION. (a) A person [~~by sworn affidavit~~] may file with the *executive director* [~~commissioner~~] a complaint alleging a violation of this chapter.

(b) On receipt of the complaint, the *executive director* [~~commissioner~~] shall investigate the alleged violation and may:

- (1) inspect any record relevant to the complaint; and
- (2) subpoena the record and any necessary witness.

SECTION 6.007. Subsections (a) and (c), Section 2502.253, Occupations Code, are amended to read as follows:

(a) If the *executive director* [~~commissioner~~] determines as a result of an investigation that a violation of this chapter may have occurred, the *executive director* [~~commissioner~~] shall hold a hearing [~~not later than the 45th day after the date the complaint was filed under Section 2502.252~~].

(c) The *executive director* [~~commissioner~~] shall render a decision on the alleged violation [~~not later than the eighth day~~] after [~~the date~~] the hearing is concluded.

SECTION 6.008. Section 2502.254, Occupations Code, is amended to read as follows:

Sec. 2502.254. SANCTIONS. (a) If, after a hearing, the *commission* [~~commissioner~~] determines that a career counseling service has violated this chapter, the *commission* [~~commissioner~~] may, as appropriate:

- (1) issue a warning to the service; or
- (2) suspend or revoke the certificate of authority issued to the service.

(b) If, after a hearing, the *commission* [~~commissioner~~] determines that a career counseling service has violated this chapter, the *executive director* [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the service.

SECTION 6.009. Section 2502.255, Occupations Code, is amended to read as follows:

Sec. 2502.255. REISSUANCE OF CERTIFICATE AFTER REVOCATION. If the *commission* [~~commissioner~~] revokes the certificate of authority of a career counseling service under Section 2502.254, the service and any owner of that service may not apply for a new certificate until after the third anniversary of the date the certificate was revoked.

SECTION 6.010. Sections 2502.057 and 2502.101, Occupations Code, are repealed.

ARTICLE 7. COMBATIVE SPORTS

SECTION 7.001. Section 2052.002, Occupations Code, is amended by amending Subdivisions (4) and (6) and adding Subdivisions (8-a), (13-a), and (15-a) to read as follows:

(4) "*Commission*" [~~"Commissioner"~~] means the *Texas Commission of Licensing and Regulation* [~~commissioner of licensing and regulation or the commissioner's designated representative~~].

(6) "*Elimination tournament*" means a boxing contest in which elimination tournament contestants compete in a series of matches until not more than one contestant remains in any weight category. *The term does not include a boxing event described by Section 2052.110.*

(8-a) "*Executive director*" means the executive director of the department.

(13-a) "*Promoter*" means a boxing promoter or wrestling promoter.

(15-a) "*Ringside physician*" means an individual licensed to practice medicine in this state who is registered with the department.

SECTION 7.002. Subchapter A, Chapter 2052, Occupations Code, is amended by adding Section 2052.003 to read as follows:

Sec. 2052.003. *APPLICABILITY OF OTHER LAW. Section 51.401 does not apply to this chapter.*

SECTION 7.003. The heading to Subchapter B, Chapter 2052, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES [~~OF DEPARTMENT AND COMMISSIONER~~]

SECTION 7.004. Section 2052.052, Occupations Code, is amended to read as follows:

Sec. 2052.052. RULES. (a) The *commission* [~~commissioner~~] shall adopt reasonable and necessary rules to administer this chapter.

(b) The *commission* [~~commissioner~~] may adopt rules:

- (1) governing professional kickboxing contests and exhibitions; ~~and~~
- (2) establishing reasonable qualifications for an applicant seeking a license from the department under this chapter;
- (3) *recognizing a sanction, medical suspension, or disqualification of a license holder by a combative sports authority in any state, provided that if licensure is denied based on those actions, an applicant has a right to a hearing as prescribed by rule;*
- (4) *establishing practice requirements or specialty certifications that a person licensed to practice medicine in this state must meet to register as a ringside physician;*
- (5) *requiring a contestant to present to the executive director at the time of weigh-in an original copy of recent blood test results that demonstrate whether the contestant is free from hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by commission rule and providing that a contestant's failure to provide the required blood test results disqualifies the contestant;*
- (6) *providing that to participate in any event a contestant must be free of hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule;*
- (7) *requiring that a contestant undergo a physical examination, including an ophthalmological examination, at or near the time of weigh-in and providing for disqualification of a contestant who is determined by an examining physician to be unfit; and*
- (8) *establishing additional responsibilities for promoters.*

SECTION 7.005. Section 2052.054, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The *commission* ~~[commissioner]~~ may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

(c) *Section 51.405 does not apply to this chapter.*

SECTION 7.006. Subchapter B, Chapter 2052, Occupations Code, is amended by adding Section 2052.055 to read as follows:

Sec. 2052.055. MEDICAL ADVISORY COMMITTEE. (a) The presiding officer of the commission, with the commission's approval, may appoint a medical advisory committee to advise the department concerning health issues for boxing event contestants.

(b) If the commission elects to appoint an advisory committee, the commission by rule shall establish:

- (1) the number of committee members;*
- (2) qualifications for appointment to the committee; and*
- (3) the purpose and duties of the committee.*

SECTION 7.007. Section 2052.103, Occupations Code, is amended to read as follows:

Sec. 2052.103. ELIMINATION TOURNAMENT BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for an elimination tournament boxing promoter's license under this chapter must apply on a form furnished by the executive director ~~[commissioner]~~.

(b) An application must be accompanied by an application fee ~~[of not more than \$1,000]~~ and, if the applicant charges a fee for admission to the elimination tournament or awards a trophy, prize, including a prize of money, or other item of value of more than \$50 to a contestant winning the elimination tournament:

- (1) a \$50,000 surety bond subject to approval by the executive director* ~~[commissioner]~~ and conditioned on the applicant's payment of:
 - (A) the tax imposed under Section 2052.151; and*
 - (B) a claim against the applicant as described by Section 2052.109(a)(3); and*
- (2) proof of not less than \$10,000 accidental death or injury insurance coverage for each contestant participating in the elimination tournament.*

SECTION 7.008. Section 2052.107, Occupations Code, is amended to read as follows:

Sec. 2052.107. **OTHER BOXING LICENSES.** Unless a person holds a license or registration issued under this chapter, the person may not act as a:

- (1) professional boxer;
- (2) manager of a professional boxer;
- (3) referee;
- (4) judge;
- (5) second;
- (6) timekeeper; ~~[or]~~
- (7) matchmaker; or
- (8) ringside physician.

SECTION 7.009. Section 2052.110, Occupations Code, is amended to read as follows:

Sec. 2052.110. **LICENSE AND BONDING EXCEPTIONS.** The licensing and bonding requirements of this subchapter do not apply to:

(1) a boxing event in which the participants do not receive a money remuneration, purse, or prize for their performances or services if the event is promoted, conducted, or maintained by:

- (A) an educational institution;
- (B) a law enforcement organization;
- (C) a Texas National Guard Unit; or
- (D) an amateur athletic organization recognized by the executive director ~~[commissioner]~~;

(2) an event conducted by a nonprofit amateur athletic association chartered under the law of this state, including a membership club affiliated with the association located within this state and recognized by the executive director ~~[commissioner]~~;

(3) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of different educational institutions participate; ~~[or]~~

(4) an event in which only members of a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency participate; or

(5) an event conducted by an organization of the Olympic Games, the Paralympic Games, or the Pan-American Games.

SECTION 7.010. Subchapter C, Chapter 2052, Occupations Code, is amended by adding Sections 2052.114 and 2052.115 to read as follows:

Sec. 2052.114. **LICENSE, REGISTRATION, AND PERMIT TERM AND RENEWAL.**

(a) A license, registration, or permit issued under this chapter is valid for one year after the date of issuance.

(b) The holder of a license, registration, or permit may renew the license, registration, or permit by paying a renewal fee and complying with other renewal requirements prescribed by department rule before the expiration date. The department shall issue a renewal certificate to the holder at the time of renewal.

Sec. 2052.115. **PROMOTER RESPONSIBILITIES.** For each promoted event, a promoter shall:

- (1) assure that all contestants scheduled to participate are licensed before the event;
- (2) provide that an ambulance, serviced by at least two emergency medical technicians, is present on the premises where the event is held;
- (3) provide for a physical examination of each contestant that complies with rules adopted under this chapter; and
- (4) comply with all commission rules.

SECTION 7.011. Subsection (a), Section 2052.151, Occupations Code, is amended to read as follows:

(a) A tax is imposed on a person who:

(1) conducts a boxing event, including an elimination tournament, in which a fee is charged for admission to the event;

(2) exhibits in this state a simultaneous telecast of a live, spontaneous, or current boxing event on a closed circuit telecast, in which a fee is charged for admission to the telecast; or

(3) conducts or sponsors an amateur boxing event, other than an event exempt from licensing under Section 2052.110(2), (3), ~~or~~ (4), or (5), in which a fee is charged for admission to the event.

SECTION 7.012. Subsection (a), Section 2052.152, Occupations Code, is amended to read as follows:

(a) A person on whom a tax is imposed under Section 2052.151, not later than 72 hours after the end of the event or telecast for which the tax is due, shall submit to the department a verified report on a form furnished by the department stating:

(1) the number of tickets sold to the event;

(2) the ticket prices charged; ~~and~~

(3) *the gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges; and*

(4) the amount of gross receipts obtained from the event.

SECTION 7.013. Subsection (b), Section 2052.201, Occupations Code, is amended to read as follows:

(b) An elimination tournament match consists of three ~~one-minute~~ rounds of *not more than 90 seconds per round* with an interval of at least one minute between rounds.

SECTION 7.014. Section 2052.202, Occupations Code, is amended to read as follows:

Sec. 2052.202. **CONTESTANT PARTICIPATION; REGISTRATION.** (a) An elimination tournament contestant *must register with the department for a tournament not later than the 30th day before the date of the tournament. The department shall prescribe the registration form.*

(b) *An elimination tournament contestant may not participate in more than[:*

~~[(1)] one match a [during the first] night [of a two-night elimination tournament other than a championship tournament; or~~

~~[(2)] two matches during the first night of a two-night championship tournament.~~

~~[(b) An elimination tournament contestant may participate in any number of matches during the second night of a two-night elimination tournament].~~

(c) ~~[Except as provided by Subsection (d), an elimination tournament boxing promoter may permit an elimination tournament contestant who does not win a match during the first night of a two-night elimination tournament to participate in the tournament during the second night of the tournament.~~

~~[(d)] An elimination tournament contestant who fights and loses a match [is knocked out during the tournament] may not [continue to] participate in another [the] tournament in this state for at least 90 days after the date of the loss.~~

SECTION 7.015. Section 2052.251, Occupations Code, is amended to read as follows:

Sec. 2052.251. **BOXING GLOVES.** A boxing event contestant, other than an elimination tournament contestant under Subchapter E, shall wear eight-ounce boxing gloves, unless the *commission [commissioner]* by rule requires or permits a contestant to wear heavier gloves.

SECTION 7.016. Subsections (a), (b), and (e), Section 2052.252, Occupations Code, are amended to read as follows:

(a) This section applies to an amateur boxing event, other than an *event described by Section 2052.110(2), (3), (4), or (5) or an* elimination tournament subject to Subchapter E, in which a fee is charged for admission to the event.

(b) The event may take place only if the *executive director [commissioner]* approves the event not later than seven days before the date the event begins.

(e) The event is subject to the supervision of the *executive director* ~~[commissioner]~~.

SECTION 7.017. Subchapter G, Chapter 2052, is amended by adding Section 2052.3015 to read as follows:

Sec. 2052.3015. PROMOTER PENALTY FOR LATE LICENSE. A promoter who does not comply with Section 2052.115(1) in a timely manner is subject to a penalty under this chapter for each contestant who obtains a license less than 72 hours before an event in which the contestant is scheduled to participate.

SECTION 7.018. Section 2052.302, Occupations Code, is amended to read as follows:

Sec. 2052.302. WITHHOLDING OF PURSE AND FORFEITURE OF PURSE. (a) The executive director [commissioner] may order a promoter [boxer or manager] to withhold any [forfeit to this state a] purse or other funds payable to the holder of a license or registration under this chapter if it appears more likely than not that the holder has violated [in an amount of not more than \$1,000 for violating] this chapter or a rule adopted under this chapter.

(b) The promoter shall surrender any purse or funds withheld as provided by Subsection (a) to the executive director on demand. Not later than the fifth working day after the event, the department shall notify in writing the promoter and any person from whom a sum was withheld of the date of a hearing to determine whether all or part of the purse or funds withheld should be forfeited to the state. The hearing must be scheduled for a date not later than the 10th day after the date of the notice. Not later than the 10th day after the date of the hearing, the executive director shall enter an order with findings of fact and conclusions of law determining whether all or part of the purse or funds should be forfeited. Any funds not forfeited shall be distributed to the persons entitled to the funds.

(c) Except as otherwise provided by this subchapter, a proceeding under this section shall be conducted in the manner provided by Chapter 2001, Government Code.

(d) A person aggrieved by an order entered under this section may appeal the order by filing a petition in a district court in Travis County in the manner provided by Chapter 2001, Government Code.

SECTION 7.019. Subsections (a) and (b), Section 2052.304, Occupations Code, are amended to read as follows:

(a) A person may seek review of a decision or an order of the executive director or the commission [commissioner] under this chapter by filing a petition for review in a district court in Travis County [not later than the 30th day after the date on which the decision or order of the commissioner is final if the person is:

- [1) a party to an administrative hearing in which the decision or order is issued; and*
- [2) aggrieved by the decision or order].*

(b) Chapter 2001, Government Code, governs any proceeding under this section. [The filing of a petition for review under Subsection (a) does not stay the effect of the decision or order of the commissioner that is the subject of the petition. The commissioner or the district court in which the petition for review is filed may order a stay on appropriate terms.]

SECTION 7.020. The following laws are repealed:

- (1) Section 2052.104, Occupations Code;
- (2) Section 2052.112, Occupations Code;
- (3) Section 2052.154, Occupations Code;
- (4) Section 2052.301, Occupations Code;
- (5) Subsection (c), Section 2052.304, Occupations Code;
- (6) Section 2052.305, Occupations Code;
- (7) Section 2052.306, Occupations Code; and
- (8) Section 2052.307, Occupations Code.

SECTION 7.021. Section 2052.302, Occupations Code, as amended by this article, applies to a forfeiture imposed on or after the effective date of this article. A forfeiture imposed

before that date is governed by the law in effect on the date the forfeiture was ordered, and the former law is continued in effect for that purpose.

SECTION 7.022. This article takes effect January 1, 2004.

ARTICLE 8. COURT INTERPRETERS

SECTION 8.001. Section 57.041, Government Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) *“Executive director” means the executive director of the department.*

SECTION 8.002. Subsections (a), (c), (e), and (g), Section 57.042, Government Code, are amended to read as follows:

(a) The licensed court interpreter advisory board is established as an advisory board to the *commission* ~~[department]~~. The board is composed of nine members appointed by the *presiding officer of the commission, with the commission’s approval* ~~[governor]~~. Members of the board serve staggered six-year terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year.

(c) *The presiding officer of the commission, with the commission’s approval, [At the initial meeting of the board and at the first meeting after new members take office, the board]* shall select from *the board* ~~[its]~~ members a presiding officer of the board to serve for two years.

(e) The *presiding officer of the commission, with the commission’s approval, [commissioner]* may remove a member of the board for inefficiency or neglect of duty in office. If a vacancy occurs on the board, the *presiding officer of the commission, with the commission’s approval, [governor]* shall appoint a member who represents the same interests as the former member to serve the unexpired term.

(g) The board shall advise the *commission* ~~[commissioner]~~ regarding the adoption of rules and the design of a licensing examination.

SECTION 8.003. Subsections (a) and (b), Section 57.043, Government Code, are amended to read as follows:

(a) The *executive director* ~~[commissioner]~~ shall issue a court interpreter license to an applicant who:

- (1) can interpret for an individual who can hear but who does not comprehend English or communicate in English;
- (2) passes the appropriate examination prescribed by the *executive director* ~~[commissioner]~~; and
- (3) possesses the other qualifications for the license required by this subchapter or by rules adopted under this subchapter.

(b) The *commission* ~~[commissioner]~~ shall[;

~~[(4)]~~ adopt rules relating to licensing under this subchapter[;] and the *executive director* shall

~~[(2)]~~ prescribe all forms required under this subchapter.

SECTION 8.004. Section 57.048, Government Code, is amended to read as follows:

Sec. 57.048. SUSPENSION AND REVOCATION OF LICENSES; REISSUANCE. (a) After a hearing, the *commission* ~~[commissioner]~~ shall suspend or revoke a court interpreter license on a finding that the individual:

- (1) made a material misstatement in an application for a license;
- (2) ~~[willfully]~~ disregarded or violated this subchapter or a rule adopted under this subchapter; or
- (3) ~~[has been convicted of a felony or of any crime in which an essential element of the offense is misstatement, fraud, or dishonesty; or~~

~~[(4)]~~ engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets.

(b) The *executive director* [~~commissioner~~] may reissue a license to an individual whose license has been revoked if the individual applies in writing to the department and shows good cause to justify reissuance of the license.

SECTION 8.005. Subdivision (3), Section 57.041, Government Code, is repealed.

SECTION 8.006. The changes in law made by this article applying to members of the licensed court interpreter advisory board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 9. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

SECTION 9.001. Subchapter B, Chapter 754, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. INSPECTION, ~~AND~~ CERTIFICATION, AND REGISTRATION

Sec. 754.011. DEFINITIONS. In this subchapter:

(1) “Acceptance inspection” means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) “Accident” means an event involving equipment that results in death or serious bodily injury to a person.

(3) “Alteration” means a change in or modernization of existing equipment. The term does not include maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) “Annual inspection” means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) “ASCE Code 21” means the American Society of Civil Engineers Code 21 for people movers operated by cables.

(6) “ASME Code A17.1” means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1.

(6-a) “Executive director” means the executive director of the department.

(7) [(2)] “ASME Code A17.3” means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(8) “ASME Code A18.1” means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1.

(9) [(3)] “Board” means the elevator advisory board.

(10) [(4)] “Commission” means the Texas Commission of Licensing and Regulation.

(11) [(5)] “Commissioner” means the commissioner of licensing and regulation.

(12) “Contractor” means a person engaged in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(13) [(6)] “Department” means the Texas Department of Licensing and Regulation.

(14) “Equipment” means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(15) “Industrial facility” means a facility to which access is primarily limited to employees or contractors working in that facility.

(16) ~~[(7)]~~ “Qualified historic building or facility” means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(17) ~~[(8)]~~ “Related equipment” means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, ~~an~~ ~~[or]~~ escalator, a chairlift, a platform lift, an automated people mover operated by cables, or ~~[and includes]~~ a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(18) “Serious bodily injury” means a major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(19) “Unit of equipment” means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Sec. 754.0111. EXEMPTION. (a) This subchapter does not apply to ~~[an elevator, escalator, or related]~~ equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This subchapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the *presiding officer of the commission*, with the *commission’s approval*, ~~[commissioner]~~ as follows:

(1) a representative of the insurance industry or a certified elevator inspector;

(2) a representative of ~~[elevator, escalator, and related]~~ equipment constructors;

(3) a representative of owners or managers of a *building* ~~[buildings]~~ having fewer than six stories and having ~~[an elevator, an escalator, or related]~~ equipment;

(4) a representative of owners or managers of a *building* ~~[buildings]~~ having six stories or more and having ~~[an elevator, an escalator, or related]~~ equipment;

(5) a representative of independent ~~[elevator, escalator, and related]~~ equipment maintenance companies;

(6) a representative of ~~[elevator, escalator and related]~~ equipment manufacturers;

(7) a *licensed or registered engineer or architect* ~~[representative of professional engineers or architects]~~;

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the *commission* ~~[commissioner]~~.

(c) The *presiding officer of the commission*, with the *commission’s approval*, ~~[commissioner]~~ shall appoint a presiding officer of the board to serve for two years.

(d) The board shall meet at least twice each calendar year.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the *General Appropriations Act* ~~[and other necessary expenses incurred in performing duties under this subchapter]~~.

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the *commission* ~~[commissioner]~~ on:

(1) the adoption of appropriate standards for the installation, alteration, operation, and inspection of ~~[elevators, escalators, and related]~~ equipment;

(2) the status of ~~[elevators, escalators, and related]~~ equipment used by the public in this state; ~~[and]~~

(3) *sources of information relating to equipment safety*;

- (4) *public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and*
- (5) *any other matter considered relevant by the commission [commissioner].*

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION [COMMISSIONER]. (a) The *commission [commissioner]* shall adopt standards for the installation, maintenance, alteration, operation, and inspection of *[elevators, escalators, and related]* equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain *[an elevator, an escalator, or related]* equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted by the *commission [commissioner]* may not contain requirements in addition to the requirements in the ASME Code A17.1, *[or] ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this subchapter at the time of alteration.*

(c) Standards adopted by the *commission [commissioner]* must require *[elevators, escalators, and related]* equipment to comply with the installation requirements of the *[following, whichever is the least restrictive:*

(1) the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the [elevators, escalators, and related] equipment[; or

(2) an applicable municipal ordinance governing the installation of elevators, escalators, and related equipment that was in effect on the date of installation].

(d) Standards adopted by the *commission [commissioner]* must require *[elevators, escalators, and related]* equipment to comply with the installation requirements of the [1994] ASME Code A17.3 that contains minimum safety standards for all *[elevators, escalators, and related]* equipment, regardless of the date of installation.

(e) *The executive director [On written request, the commissioner] shall grant a delay for compliance with the applicable ASME Code A17.1, [or the 1994] ASME Code A17.3, or ASME Code A18.1 until a specified time if compliance is not readily achievable, as that phrase is defined in the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations adopted under that Act. The accumulated total time of all delays may not exceed three years, except as provided by Subsection (f) or as allowed in the discretion of the executive director.*

(f) *The executive director [On written request, the commissioner] shall grant a delay until September 1, 2005, for compliance with the requirements for door restrictors or firefighter's service in the [1994] ASME Code A17.3 if those requirements were not included in the ASME Code A17. 1 that was in effect on the date of installation [of the elevator, escalator, or related equipment] and the [that] equipment was not subsequently installed [by an owner of the elevator, escalator, or related equipment].*

(g) The *executive director [commissioner]* may grant a waiver of compliance *from an applicable code requirement [with the applicable ASME Code A17.1 or the 1994 ASME Code A17.3]* if the *executive director [commissioner]* finds that:

(1) the building in which the *[elevator, escalator, or related]* equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building; *[and]*

(2) noncompliance will not constitute a significant threat to passenger safety; *and*

(3) *noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.*

(h) *The executive director shall grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger.*

The *executive director* ~~[commissioner]~~ may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the ~~[1994]~~ ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

- (1) is used only for parking;
- (2) is constructed of noncombustible materials; and
- (3) is not greater than 75 feet in height.

(i) This subchapter does not apply to ~~[an elevator, an escalator, or related]~~ equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited *primarily* ~~[principally]~~ to employees of or working in that facility or structure.

(j) ~~[The commissioner may charge a reasonable fee as set by the commission for an application for waiver or delay.]~~ One application for a waiver or delay may contain all requests related to a *unit of equipment* ~~[particular building]~~. A delay may not be granted indefinitely but must be granted for ~~[to]~~ a specified time *not to exceed three years*.

(k) For purposes of this section, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the *installation or alteration of the* ~~[purchase of the elevators, escalators, or related]~~ equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the ~~[elevators, escalators, or related]~~ equipment was *installed or altered* ~~[constructed]~~ or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the ~~[elevators, escalators, or related]~~ equipment was installed.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) *Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a QEI-1 certified inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.*

(b) *The commission shall, before January 1, 2004, adopt rules containing minimum safety standards that must be used by QEI-1 certified inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.*

(c) *A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the QEI-1 inspection report to the municipality.*

(d) *A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.*

(e) *On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a QEI-1 certified inspector.*

(f) *An inspection by a QEI-1 certified inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.022, 754.023, or 754.024.*

Sec. 754.015. RULES. (a) *The commission* ~~[commissioner]~~ *by rule shall provide for:*

(1) *an annual* ~~[the]~~ *inspection and certification of the* ~~[once each calendar year of elevators, escalators, and related]~~ equipment covered by standards adopted under this subchapter;

(2) ~~[the]~~ enforcement of those standards;

(3) *registration* ~~[the certification]~~ of qualified ~~[persons as]~~ inspectors and contractors ~~[for the purposes of this subchapter]; [and]~~

(4) the form of ~~[the]~~ inspection documents, contractor reports, ~~[report]~~ and certificates ~~[certificate]~~ of compliance;

(5) *notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;*

(6) approval of continuing education programs for registered QEI-1 certified inspectors; and

(7) standards of conduct for individuals who are registered under this subchapter.

(b) The commission [~~commissioner~~] by rule may not [~~require that~~]:

(1) require inspections of equipment to [~~inspection~~] be made more often than every 12 months, except as provided by Subsection (c) [~~once per year of elevators, escalators, and related equipment~~];

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration; [~~and~~]

(3) require building owners to submit to the department proposed plans for equipment installation or alteration; or

(4) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment.

(c) The commission by rule may require a reinspection or recertification of equipment if the equipment has been altered and poses a significant threat to passenger or worker safety or if an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) applying for a waiver or delay; and

(6) attending a continuing education program sponsored by the department for registered QEI-1 inspectors [~~inspection reports or certificates of compliance be placed in locations other than one provided in Section 754.019(4).~~]

Sec. 754.016. INSPECTION REPORTS [~~REPORT~~] AND CERTIFICATES [~~CERTIFICATE~~] OF COMPLIANCE. (a) Inspection reports [~~An inspection report~~] and certificates [~~a certificate~~] of compliance required under this subchapter must cover all [~~elevators, escalators, and related~~] equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons. [~~There shall be only one inspection report and one certificate of compliance for each building.~~]

(b) An inspector shall date and sign an inspection report and shall issue the report to the building owner not later than the 10th calendar day after the date of inspection. [~~The inspection report shall be on forms designated by the commissioner.~~]

(c) The executive director [~~commissioner~~] shall date and sign a certificate of compliance and shall issue the certificate to the building owner. The certificate of compliance shall state:

(1) that the [~~elevators, escalators, and related~~] equipment has [~~have~~] been inspected by a certified inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director [~~commissioner~~] and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection; and

(3) contact information at the department to report a violation of this subchapter.

(d) The commission by rule shall:

(1) specify what information must be contained in a certificate of compliance;

(2) describe the procedure by which a certificate of compliance is issued;

(3) require that a certificate of compliance related to an elevator be posted in a publicly visible area of the building; and

(4) determine what constitutes a "publicly visible area" under Subdivision (3).

Sec. 754.017. CERTIFIED INSPECTORS. (a) *In order to inspect equipment, an individual must:*

- (1) *be registered [~~An inspector must register~~] with the department;*
 - (2) *attend educational programs approved by the department;*
 - (3) *[and] be certified as a QEI-1 [~~an ASME-QEI-1~~] inspector by an organization accredited by the American Society of Mechanical Engineers; and*
 - (4) *pay all applicable fees. [~~Any certification charges or fees shall be paid by the inspector.~~]*
- (b) *[~~The commissioner may not by rule prohibit an ASME-QEI-1 certified inspector who is registered with the department from inspecting under this subchapter an elevator, an escalator, or related equipment.~~] A person assisting a certified inspector and working under the direct, on-site supervision of the inspector is not required to be [~~ASME-QEI-1~~] certified.*
- (c) *A registration expires on the first anniversary of the date of issuance.*
- (d) *A certified inspector may not be required to attend more than seven hours of continuing education during each licensing period. [~~The commissioner may charge a \$15 fee to certified inspectors for registering with the department.~~]*

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) *A person may not install, repair, or maintain equipment without registering as a contractor with the department as required by this subchapter.*

- (b) *A contractor shall submit an application for registration and pay appropriate fees to the department. The registration application form may require information concerning the background, experience, or identity of the applicant.*
- (c) *A registration expires on the first anniversary of the date of issuance.*
- (d) *A person registering as a contractor under this subchapter shall submit to the department an initial report, not later than the 60th day following the application date, containing:*
- (1) *the street address of each building or location at which the person performed installation, repair, alteration, or maintenance of equipment for the previous two years; and*
 - (2) *the name and mailing address of the building owner.*
- (e) *After the initial report required by Subsection (d), a contractor registered as required by this subchapter shall submit to the department a quarterly report containing:*
- (1) *the street address of each building or location at which the contractor performed installation, repair, alteration, or maintenance of equipment not reported in the contractor's initial report to the department under Subsection (d); and*
 - (2) *the name and mailing address of the building owner.*
- (f) *Installation, repair, alteration, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.*

Sec. 754.0172. INSPECTION FEE. *[~~(a) A person inspecting an elevator, an escalator, or related equipment under this subchapter may not charge more than \$65 per elevator cab or per escalator for each inspection.~~]*

[~~(b)~~] The amount charged for an inspection or the performance of an inspection of equipment under this subchapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Sec. 754.018. POWERS OF MUNICIPALITIES. *Subject to Section 754.014(h), if [~~If~~] a municipality operates a program for the installation, maintenance, alteration, inspection, or [~~and~~] certification of [~~elevators, escalators, and related~~] equipment, this subchapter shall not apply to the [~~elevators, escalators, and related~~] equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, and certification are at least equivalent to [~~no less stringent than~~] those contained in this subchapter.*

Sec. 754.019. DUTIES OF REAL PROPERTY OWNERS. (a) The owner of real property on which ~~[an elevator, an escalator, or related]~~ equipment covered by this subchapter is located shall:

(1) have the ~~[elevator, escalator, or related]~~ equipment inspected *annually* by a ~~[an ASME-QEI-1]~~ certified inspector ~~[in accordance with the commissioner's rules];~~

(2) obtain an inspection report from the inspector evidencing that all ~~[elevators, escalators, and related]~~ equipment in a building on the real property *was* ~~[were]~~ inspected in accordance with this subchapter and rules adopted under this subchapter;

(3) file with the *executive director* ~~[commissioner a copy of]~~ each inspection report, *and all applicable fees*, ~~[and a \$20 filing fee for each report, plus \$5 for each elevator, escalator, or related equipment]~~ not later than the 60th day after the date on which an inspection is made under this subchapter;

(4) display the certificate of compliance:

(A) in a *publicly visible area of the building, as determined by commission rule under Section 754.016*, ~~[the elevator mechanical room]~~ if the certificate relates to an elevator;

(B) in the escalator box if the certificate relates to an escalator; or

(C) in a place designated by the *executive director* ~~[commissioner]~~ if the certificate relates to ~~[related]~~ equipment *other than an elevator or escalator*; and

(5) display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued ~~[by the commissioner]~~.

(b) When an inspection report is filed ~~[with the commissioner]~~, the owner shall submit to the *executive director*, *as applicable* ~~[commissioner]~~:

(1) verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) ~~[An inspection must be made not later than 18 months after the previous calendar year's inspection. This subsection does not affect the requirement that elevators, escalators, or related equipment be inspected at least once each calendar year.]~~

~~[(d)]~~ For the purpose of determining timely filing under Subsection (a)(3) *and Section 754.016(b)*, an inspection report and *filing fees* ~~[fee]~~ are considered filed on the *earlier of*:

(1) *the date of personal delivery;*

(2) *the date of postmark* ~~[mailing]~~ by United States mail if properly addressed to the *executive director*; or

(3) *the date of deposit with a commercial courier service, if properly addressed to the executive director* ~~[commissioner]~~.

~~[(d)]~~ ~~[(e)]~~ If the inspection report and fee required by Subsection (a)(3) are not timely filed, the commissioner may charge the owner of the real property on which the elevator, escalator, or related equipment is located an additional \$100 fee for late filing.

~~[(f)]~~ The commissioner may not require that an inspection report or certificate of compliance be placed inside or immediately outside an elevator cab or escalator or in the lobby or hallways of a building.

~~[(g)]~~ A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.

(e) An owner shall report to the department each accident involving equipment not later than 72 hours following the accident.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR ~~[DEPOSIT OF FEES]~~. *The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:*

(1) *may not have a financial or commercial interest in the manufacture, maintenance, repair, inspection, installation, or sale of equipment; and*

(2) *must possess a QEI-1 certification or obtain the certification within six months after becoming chief inspector* ~~[Fees collected under this subchapter shall be deposited to~~

~~the credit of an account in the general revenue fund that may be used by the commissioner only to administer and enforce this subchapter and to reimburse expenses of board members provided by this subchapter].~~

Sec. 754.021. LIST OF REGISTERED INSPECTORS AND CONTRACTORS[; ~~PERSONNEL~~]. The executive director shall ~~[commissioner may]~~:

- (1) compile a list of ~~[ASME-QEI-1]~~ certified inspectors and contractors who are registered with the department ~~[to perform an inspection under this subchapter]~~; and
- (2) employ personnel *who are* ~~[as]~~ necessary to enforce this subchapter.

Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the *department* ~~[commissioner]~~ learns of a situation of noncompliance under Section 754.019, the *department* ~~[commissioner]~~ shall send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

Sec. 754.023. INVESTIGATION; *REGISTRATION* ~~[LICENSE]~~ PROCEEDINGS; INJUNCTION; *EMERGENCY ORDERS*. (a) If there is good cause for the *executive director* ~~[commissioner]~~ to believe that ~~[an elevator, an escalator, or related]~~ equipment on real property *poses an imminent and significant danger* ~~[is dangerous]~~ or that an accident involving ~~[an elevator, an escalator, or related]~~ equipment occurred on the property and serious bodily injury or property damage resulted, *the executive director* ~~[the commissioner]~~ may enter the property during regular business hours after notice to the owner, operator, or person in charge of the property to inspect the ~~[elevator, escalator, or related]~~ equipment or investigate the *danger or accident* at no cost to the owner.

(b) The *executive director* ~~[commissioner]~~ may enter real property during regular business hours after notice to the owner, operator, or person in charge of the property to verify, at no cost to the owner, whether an inspection report or certificate of compliance has been displayed as required under Section 754.019(a).

(c) The *commission* ~~[commissioner]~~ may deny, suspend, or revoke a ~~[the]~~ registration under this subchapter and may assess an administrative penalty ~~[of any ASME-QEI-1 certified inspector]~~ for:

- (1) obtaining registration with the *executive director* ~~[commissioner]~~ by fraud or false representation;
- (2) falsifying a ~~[any inspection]~~ report submitted to the *executive director* ~~[commissioner]~~; or
- (3) violating this subchapter or a rule adopted under this subchapter.

(d) *Proceedings for the denial, suspension, or revocation of a registration and appeals from those proceedings are governed by Chapter 2001, Government Code.*

(e) The *executive director* ~~[commissioner]~~ is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this subchapter or a rule adopted under this subchapter.

(f) ~~[(e)]~~ The *executive director* ~~[commissioner]~~ may bring suit in a district court in Travis County or in the county in which the violation or threatened violation occurs. If requested, the attorney general shall represent the *executive director* ~~[commissioner]~~ in the suit.

(g) *The executive director may issue an emergency order as necessary to enforce this subchapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.*

(h) *The executive director may issue an emergency order with simultaneous notice and without hearing or with the notice and opportunity for hearing practicable under the circumstances.*

(i) *If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.*

(j) *An emergency order may direct a building owner or manager to disconnect power to or lock out equipment if:*

- (1) the department determines imminent and significant danger to passenger safety exists if action is not taken immediately and reasonable effort has been made for voluntary compliance by notification to the building owner or manager of the danger before the issuance of an emergency order; or
- (2) an annual inspection has not been performed in more than two years and:
- (A) the department gives the building owner or manager, or the agent of the building owner or manager, 60 days' written notice by certified mail directing the equipment to be inspected according to this subchapter; and
- (B) after the expiration of the notice period under Paragraph (A), the department gives the building owner or manager, or the agent of the building owner or manager, written notice by certified mail stating that an order to disconnect power or lock out equipment will be made after the seventh day after the date notice is delivered.
- (k) If an emergency order to disconnect power or lock out equipment is issued, the building owner or manager may have the power reconnected or the equipment unlocked only if:
- (1) a registered inspector or contractor or a department representative has filed a written form with the department verifying the imminent and significant danger has been removed by repair, replacement, or other means; and
- (2) the building owner, before the reconnection of power or unlocking of equipment, reimburses the department for all expenses incurred relating to the disconnection of power or lockout.
- (l) The executive director or the executive director's designee may allow delayed payment if the building owner or manager commits in writing to pay the department for the expenses required by Subsection (k) not later than the 10th day after the date power is reconnected or equipment is unlocked.
- (m) If an emergency order to disconnect power or lock out equipment is issued and the building owner later notifies the department that the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (k) are satisfied, promptly issue written permission to reconnect power or unlock the equipment and notify the owner.

Sec. 754.024. CRIMINAL PENALTY. (a) A person commits an offense if the person receives notice of noncompliance under Section 754.022 and the person has not remedied the noncompliance or entered into a bona fide contract to remedy the noncompliance before the 61st day after the date on which the notice is received.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of an offense under Subsection (a) constitutes a separate offense.

Sec. 754.025. APPLICATION OF CERTAIN LAW. (a) Chapter 53, Occupations Code, applies to a registration under this subchapter.

(b) Sections 51.401 and 51.404, Occupations Code, do not apply to this subchapter.

SECTION 9.002. Not later than March 1, 2004, the Texas Commission of Licensing and Regulation shall adopt the rules required by Section 754.016 and Subsection (a), Section 754.019, Health and Safety Code, as amended by this article.

SECTION 9.003. The changes in law made by this article apply only to an inspection report or certificate of compliance issued on or after the effective date of this article. An inspection report or certificate issued before the effective date of this article is covered by the law in effect when the report or certificate was issued and is valid until the renewal date of that report or certificate under the terms of the former law, and the former law is continued in effect for that purpose. On renewal, an inspection report or certificate is subject to Chapter 754, Health and Safety Code, as amended by this article.

SECTION 9.004. (a) This article takes effect September 1, 2003, except that:

- (1) a contractor is not required to be registered under Section 754.0171, Health and Safety Code, as amended by this article, before January 1, 2004; and

(2) an escalator constructed before September 1, 2003, is not required to comply with step/skirt index requirements imposed under the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3 before September 1, 2009.

(b) A member of the elevator advisory board serving on the effective date of this article continues to serve until removed by the governor or until the member's successor is appointed by the governor.

ARTICLE 10. INDUSTRIALIZED HOUSING AND BUILDINGS

SECTION 10.001. Section 1202.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (4-a) to read as follows:

(2) *"Construction site office building" means a commercial structure that is:*

(A) *not open to the public; and*

(B) *used as an office at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property* [~~"Commissioner" means the commissioner of licensing and regulation.~~]

(4-a) *"Executive director" means the executive director of the department.*

SECTION 10.002. Section 1202.003, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) An industrialized building is a commercial structure that is:

(1) constructed in one or more modules or constructed using one or more modular components built at a location other than the *commercial* [~~permanent~~] site; and

(2) designed to be used as a commercial building when the module or the modular component is transported to the *commercial* [~~permanent~~] site and erected or installed [~~on a permanent foundation system~~].

(d) *An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site.*

SECTION 10.003. Section 1202.101, Occupations Code, is amended to read as follows:

Sec. 1202.101. RULES; ORDERS. (a) The *commission* [~~commissioner~~] shall adopt rules and issue orders as necessary to:

(1) ensure compliance with the purposes of this chapter; and

(2) provide for uniform enforcement of this chapter.

(b) The *commission* [~~commissioner~~] shall adopt rules as appropriate to implement the council's actions, decisions, interpretations, and instructions.

SECTION 10.004. Section 1202.102, Occupations Code, is amended to read as follows:

Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND REGULATION. The *commission* [~~commissioner~~] by rule shall provide for registration and regulation of manufacturers or builders of industrialized housing or buildings.

SECTION 10.005. Subsection (a), Section 1202.104, Occupations Code, is amended to read as follows:

(a) The commission shall set fees, in amounts sufficient to cover the costs of the inspections described by this chapter and the administration of this chapter, for:

(1) the registration of manufacturers or builders of industrialized housing or buildings;

(2) the inspection of industrialized housing or buildings [~~at the manufacturing facility~~]; and

(3) the issuance of decals or insignia required under Section 1202.204.

SECTION 10.006. Subchapter C, Chapter 1202, Occupations Code, is amended by adding Section 1202.106 to read as follows:

Sec. 1202.106. *APPLICABILITY OF OTHER LAW. Sections 51.401 and 51.404 do not apply to this chapter.*

SECTION 10.007. Subchapter D, Chapter 1202, Occupations Code, is amended by adding Section 1202.1535 to read as follows:

Sec. 1202.1535. EFFECT OF BUILDING CODE AMENDMENT. (a) An industrialized building that bears an approved decal or insignia indicating that the building complies with the mandatory building codes and that has not been modified or altered is considered to be in compliance with a new mandatory building code adopted by the council or an amendment to a code approved by the council under Section 1202.152 or 1202.153.

(b) The owner of an industrialized building that bears an approved decal or insignia indicating the building complies with the mandatory building codes and that is modified or altered after the date the council adopts a new mandatory building code or the council approves a building code amendment must ensure:

(1) the entire building complies with the mandatory building code or building code amendment if the cost of the modification or alteration to the building is at least 50 percent of the value of the modules or modular components used in the construction of the building; or

(2) the modified or altered portion of the building complies with the mandatory building code or building code amendment if the cost of the modification or alteration is less than 50 percent of the value of the modules or modular components.

SECTION 10.008. Section 1202.154, Occupations Code, is amended to read as follows:

Sec. 1202.154. DESIGN REVIEW. To ensure compliance with the mandatory building [construction] codes, the department or approved design review agency shall review all designs, plans, and specifications of industrialized housing and buildings in accordance with council interpretations and instructions.

SECTION 10.009. Subsection (b), Section 1202.156, Occupations Code, is amended to read as follows:

(b) With reference to the standards and requirements of the mandatory building [construction] codes, the council shall determine, from an engineering performance standpoint, all questions concerning:

(1) code equivalency; or

(2) alternative materials or methods of construction.

SECTION 10.010. Section 1202.202, Occupations Code, is amended to read as follows:

Sec. 1202.202. DEPARTMENT [IN-PLANT] INSPECTIONS. (a) To ensure compliance with the mandatory building codes or approved designs, plans, and specifications, the department shall inspect the construction of industrialized housing and buildings [at the manufacturing facility]. The executive director [commissioner] may designate approved third-party inspectors to perform the inspections subject to the rules of the commission [commissioner].

(b) Local building officials may witness department [in-plant] inspections to enable the local officials to make recommendations on inspection procedures to the council.

SECTION 10.011. Section 1202.203, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A municipal building official shall inspect all construction involving [at the permanent site of] industrialized housing and buildings to be located in the municipality to ensure compliance with designs, plans, and specifications, including inspection of:

(1) the construction of the foundation system; and

(2) the erection and installation of the modules or modular components on the [permanent] foundation.

(c) An inspection under Subsection (a) shall be conducted:

(1) at the permanent site, if the inspection is of industrialized housing; and

(2) at the commercial site, if the inspection is of industrialized buildings.

SECTION 10.012. Section 1202.204, Occupations Code, is amended to read as follows:

Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA. (a) The *commission* [commissioner] by rule shall provide for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory *building* [construction] codes.

(b) The *commission* by rule shall exempt a construction site office building from the requirements of this section.

SECTION 10.013. Section 1202.205, Occupations Code, is amended to read as follows:

Sec. 1202.205. RECIPROCITY. (a) The *commission* [commissioner] by rule may authorize an inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state.

(b) The *commission* [commissioner] by rule may authorize an inspection of industrialized housing or buildings constructed in this state for use in another state.

(c) The *commission* [commissioner] shall enter into a reciprocity agreement with the equivalent regulatory agency of the other state as necessary to implement this section.

SECTION 10.014. Subsection (b), Section 1202.251, Occupations Code, is amended to read as follows:

(b) *Except as provided by Section 1202.253, requirements* [Requirements] and regulations not in conflict with this chapter or with other state law relating to transportation, erection, installation, or use of industrialized housing or buildings must be reasonably and uniformly applied and enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site.

SECTION 10.015. Section 1202.252, Occupations Code, is amended to read as follows:

Sec. 1202.252. MUNICIPAL REGULATION OF INDUSTRIALIZED HOUSING AND BUILDINGS. (a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory *building* [construction] codes, a complete set of designs, plans, and specifications bearing the council's stamp of approval for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with *commission* [commissioner] rules, that all modules or modular components bear an approved decal or insignia indicating inspection *by the department* [at the manufacturing facility]; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory *building* [construction] codes and *commission* [commissioner] rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

(b) Procedures described by Subsection (a)(4) may require:

(1) before occupancy, a final inspection or test in accordance with mandatory *building* [construction] codes; and

(2) correction of any deficiency identified by the test or discovered in the final inspection.

SECTION 10.016. Subchapter F, Chapter 1202, Occupations Code, is amended by adding Section 1202.253 to read as follows:

Sec. 1202.253. MUNICIPAL REGULATION OF SINGLE-FAMILY AND DUPLEX INDUSTRIALIZED HOUSING. (a) *Single-family or duplex industrialized housing must have all local permits and licenses that are applicable to other single-family or duplex dwellings.*

(b) *For purposes of this section, single-family or duplex industrialized housing is real property.*

(c) *A municipality may adopt regulations that require single-family or duplex industrialized housing to:*

(1) *have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for each county in which the properties are located;*

(2) *have exterior siding, roofing, roofing pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;*

(3) *comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings; or*

(4) *be securely fixed to a permanent foundation.*

(d) *For purposes of Subsection (c), "value" means the taxable value of the industrialized housing and the lot after installation of the housing.*

(e) *Except as provided by Subsection (c), a municipality may not adopt a regulation under this section that is more restrictive for industrialized housing than that required for a new single-family or duplex dwelling constructed on-site.*

(f) *This section does not:*

(1) *limit the authority of a municipality to adopt regulations to protect historic properties or historic districts; or*

(2) *affect deed restrictions.*

SECTION 10.017. Subsection (b), Section 1202.301, Occupations Code, is amended to read as follows:

(b) A person may not construct, sell or offer to sell, lease or offer to lease, or transport over a street or highway of this state any industrialized housing or building, or modular section or component of a modular section, in violation of this chapter or a rule of the commission or order of the commission or executive director ~~[commissioner]~~.

SECTION 10.018. Section 1202.302, Occupations Code, is amended to read as follows:

Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. *In addition to imposing sanctions allowed under Section 51.353, the commission [The commissioner] may deny, permanently revoke, or suspend for a definite period and specified location or geographic area a certificate of registration if the commission [commissioner] finds that the applicant or registrant:*

(1) *provided false information on an application or other document filed with the department;*

(2) *failed to pay a fee or file a report required by the department for the administration or enforcement of this chapter;*

(3) *engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code; or*

(4) *violated:*

(A) *this chapter;*

(B) *a rule adopted by the commission or order issued by the commission or the executive director [commissioner] under this chapter; or*

(C) *a decision, action, or interpretation of the council.*

SECTION 10.019. Subsection (b), Section 1202.351, Occupations Code, is amended to read as follows:

(b) A person commits an offense if the person ~~[knowingly and wilfully]~~ violates this chapter or a published rule of the commission or order of the commission or the executive director ~~[commissioner]~~.

SECTION 10.020. The following laws are repealed:

(1) Subdivision (2), Section 1202.001, Occupations Code; and

(2) Section 1202.103, Occupations Code.

ARTICLE 11. PERSONNEL EMPLOYMENT SERVICES

SECTION 11.001. Section 2501.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivisions (3-a) and (4-a) to read as follows:

(2) “*Commission*” [~~“Commissioner”~~] means the *Texas Commission of Licensing and Regulation* [~~commissioner of licensing and regulation~~].

(3-a) “*Department*” means the *Texas Department of Licensing and Regulation*.

(4-a) “*Executive director*” means the *executive director of the department*.

SECTION 11.002. Section 2501.152, Occupations Code, is amended to read as follows:

Sec. 2501.152. COMPLAINT AND INVESTIGATION. (a) A person [~~by sworn affidavit~~] may file with the *executive director* [~~commissioner~~] a complaint alleging a violation of Section 2501.102.

(b) On receipt of a complaint, the *executive director* [~~commissioner~~] shall investigate the alleged violation and may:

(1) inspect any records relevant to the complaint; and

(2) subpoena those records and any necessary witnesses.

SECTION 11.003. Subsections (a) and (c), Section 2501.153, Occupations Code, are amended to read as follows:

(a) If the *executive director* [~~commissioner~~] determines as a result of an investigation that a violation of Section 2501.102 may have occurred, the *commission* [~~commissioner~~] shall hold a hearing [~~not later than the 45th day after the date the complaint was filed under Section 2501.152~~].

(c) The *commission* [~~commissioner~~] shall render a decision on the alleged violation [~~not later than the eighth day~~] after [~~the date~~] the hearing is concluded.

SECTION 11.004. Section 2501.154, Occupations Code, is amended to read as follows:

Sec. 2501.154. SANCTIONS. (a) If, after a hearing, the *commission* [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the *commission* [~~commissioner~~] may, as appropriate:

(1) issue a warning to the personnel service; or

(2) suspend or revoke the certificate of authority issued to the personnel service.

(b) If, after a hearing, the *commission* [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the *commission* [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the personnel service.

SECTION 11.005. Sections 2501.058 and 2501.155, Occupations Code, are repealed.

ARTICLE 12. PROPERTY TAX CONSULTANTS

SECTION 12.001. Section 1152.001, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) “*Executive director*” means the *executive director of the department*.

SECTION 12.002. The heading to Subchapter B, Chapter 1152, Occupations Code, is amended to read as follows:

SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, [~~COMMISSIONER~~] AND DEPARTMENT

SECTION 12.003. Section 1152.051, Occupations Code, is amended to read as follows:

Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The *commission* [~~commissioner~~] by rule shall establish standards of practice, conduct, and ethics for registrants.

SECTION 12.004. Subsections (a) and (b), Section 1152.102, Occupations Code, are amended to read as follows:

(a) The council is composed of six members appointed by the *presiding officer of the commission, with the commission's approval*.

(b) The *presiding officer of the commission* may appoint not more than two members who are qualified for an exemption under Section 1152.002(a)(3).

SECTION 12.005. Subsection (b), Section 1152.104, Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during a member's term, the *presiding officer of the commission, with the commission's approval*, ~~[commissioner]~~ shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

SECTION 12.006. Section 1152.105, Occupations Code, is amended to read as follows:

Sec. 1152.105. PRESIDING OFFICER. *The presiding officer of the commission, with the commission's approval*, ~~[Before March 1 of each year, the council]~~ shall appoint ~~[elect]~~ a member of the council to serve as *presiding officer of the council for two years* ~~[until the last day of February of the following year]~~.

SECTION 12.007. Section 1152.108, Occupations Code, is amended to read as follows:

Sec. 1152.108. COUNCIL POWERS. The council shall:

- (1) recommend to the *commission* ~~[commissioner]~~ standards of practice, conduct, and ethics for registrants to be adopted under this chapter;
- (2) recommend to the commission amounts for the fees it may set under this chapter;
- (3) recommend to the *commission* ~~[commissioner]~~ contents for the senior property tax consultant registration examination and standards of acceptable performance;
- (4) assist and advise the *commission* ~~[commissioner]~~ in recognizing continuing education programs and educational courses for registrants; and
- (5) advise the *commission* ~~[commissioner]~~ in establishing educational requirements for initial applicants.

SECTION 12.008. Subsection (a), Section 1152.155, Occupations Code, is amended to read as follows:

(a) To be eligible for registration, an applicant must:

- (1) be at least 18 years of age;
- (2) hold a high school diploma or its equivalent;
- (3) pay the fees required by the commission;
- (4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of process; and
- (5) meet any additional qualifications required by this chapter or by the *commission* ~~[commissioner]~~ under this chapter or Chapter 51.

SECTION 12.009. Section 1152.160, Occupations Code, is amended to read as follows:

Sec. 1152.160. SENIOR PROPERTY TAX CONSULTANT REGISTRATION EXAMINATION. (a) The *executive director* ~~[commissioner]~~ shall:

- (1) adopt an examination for registration as a senior property tax consultant; and
- (2) establish the standards for passing the examination.

(b) The department shall offer the examination at times and places designated by the *executive director* ~~[commissioner]~~.

(c) To be eligible to take the examination, an applicant must pay to the department an examination fee. ~~[The commissioner by rule may establish conditions for refunding the examination fee to an applicant who does not take the examination.]~~

(d) The examination must:

- (1) test the applicant's knowledge of:
 - (A) property taxation;
 - (B) the property tax system;
 - (C) property tax administration;

(D) ethical standards; and

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services; and

(2) be graded according to rules adopted by the *commission* [~~commissioner~~].

SECTION 12.010. Section 1152.201, Occupations Code, is amended to read as follows:

Sec. 1152.201. TERM OF CERTIFICATE OF REGISTRATION. Except as otherwise provided by the commission, a certificate of registration expires on the *first* [~~second~~] anniversary of the date of issuance.

SECTION 12.011. Subsection (a), Section 1152.202, Occupations Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee. [~~The certificate expires on the second anniversary of the date of issuance.~~]

SECTION 12.012. Section 1152.204, Occupations Code, is amended to read as follows:

Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND COURSES.

(a) The *commission* [~~commissioner~~] by rule shall recognize appropriate continuing education programs for registrants.

(b) The *commission* [~~commissioner~~] shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:

(1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and

(2) completed by a registrant who also holds:

(A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) an active real estate appraiser license or certificate under Chapter 1103.

(c) The *commission* [~~commissioner~~] may recognize an educational program or course:

(1) related to property tax consulting services; and

(2) offered or sponsored by a public provider or a recognized private provider, including:

(A) the comptroller;

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

(D) an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board; or

(E) a nonprofit and voluntary trade association, institute, or organization:

(i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;

(ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and

(iii) that subscribes to a code of professional conduct or ethics.

(d) The *commission* [~~commissioner~~] may recognize a private provider of an educational program or course if the provider:

(1) applies to the department on a printed form prescribed by the *executive director* [~~commissioner~~]; and

(2) pays in the amounts set by the commission:

(A) a nonrefundable application fee; and

(B) an educational provider's fee.

(e) The department shall refund the educational provider's fee if the *commission* [~~commissioner~~] does not recognize the provider's educational program or course.

SECTION 12.013. Section 1152.251, Occupations Code, is amended to read as follows:

Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION [COMMISSIONER]. After a hearing, the commission [commissioner] may deny a certificate of registration and may impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

- (1) a violation of this chapter or a rule applicable to the registrant adopted by the commission [commissioner] under this chapter;
- (2) gross incompetency in the performance of property tax consulting services;
- (3) dishonesty or fraud committed while performing property tax consulting services; or
- (4) a violation of the standards of ethics adopted by the commission [commissioner].

SECTION 12.014. The following laws are repealed:

- (1) Subdivision (2), Section 1152.001, Occupations Code;
- (2) Section 1152.161, Occupations Code;
- (3) Section 1152.163, Occupations Code;
- (4) Subsections (b) and (c), Section 1152.202, Occupations Code; and
- (5) effective March 1, 2004, Section 1152.203, Occupations Code.

SECTION 12.015. The change in law made by this article to Section 1152.201, Occupations Code, applies only to a certificate of registration issued or renewed on or after the effective date of this Act. A certificate of registration issued or renewed before the effective date of this Act is governed by that section as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12.016. The changes in law made by this article applying to members of the Property Tax Consultants Advisory Council do not affect the entitlement of a member serving on the council immediately before September 1, 2003, to continue to serve and function as a member of the council for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 13. SERVICE CONTRACT PROVIDERS

SECTION 13.001. Section 1304.002, Occupations Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "*Executive director*" means the executive director of the department.

SECTION 13.002. Section 1304.051, Occupations Code, is amended to read as follows:

Sec. 1304.051. SERVICE CONTRACT PROVIDERS ADVISORY BOARD. (a) The Service Contract Providers Advisory Board consists of six members appointed by the presiding officer of the commission, with the commission's approval, [commissioner] and one ex officio nonvoting member.

(b) Of the appointed members:

- (1) two must be officers, directors, or employees of a provider of service contracts that have been approved by the executive director [commissioner];
- (2) two must be officers, directors, or employees of a retail outlet or other entity in this state that provides to consumers service contracts approved by the executive director [commissioner] for sale to consumers;

(3) one must be an officer, director, or employee of an entity authorized by the Texas Department of Insurance to sell reimbursement insurance policies; and

(4) one must be a resident of this state who holds, as a consumer, a service contract that is in force in this state on the date of the member's appointment and was issued by a provider registered under this chapter.

(c) The executive director [commissioner] or the executive director's [commissioner's] designee serves as an ex officio nonvoting member of the advisory board.

SECTION 13.003. Subsection (a), Section 1304.052, Occupations Code, is amended to read as follows:

(a) The advisory board shall advise the *commission* [commissioner] in adopting rules and in administering and enforcing this chapter.

SECTION 13.004. Subsection (b), Section 1304.053, Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during an appointed member's term, the *presiding officer of the commission* [commissioner] shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

SECTION 13.005. Section 1304.054, Occupations Code, is amended to read as follows:

Sec. 1304.054. PRESIDING OFFICER. The *presiding officer of the commission, with the commission's approval*, [commissioner] shall designate one member of the advisory board to serve as *presiding officer of the board for two years*.

SECTION 13.006. Subsections (a) and (b), Section 1304.103, Occupations Code, are amended to read as follows:

(a) The *executive director* [commissioner] shall develop a tiered schedule of annual registration fees under which a provider's registration fee is based on the number of service contracts the provider sold in this state during the preceding 12-month period.

(b) The commission shall set the amounts of the fees to cover the costs of administering this chapter. [The maximum fee may not exceed \$2,000.]

SECTION 13.007. Subchapter C, Chapter 1304, Occupations Code, is amended by adding Section 1304.105 to read as follows:

Sec. 1304.105. RENEWAL. *The commission shall adopt rules regarding the renewal of a registration issued under this chapter.*

SECTION 13.008. Subsections (a), (b), (c), and (e), Section 1304.151, Occupations Code, are amended to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under *Chapter 981* [Article 1.14-2], Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the *executive director* [commissioner] a financial security deposit consisting of:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by an authorized insurer in this state;

(C) a statutory deposit of cash or cash equivalents;

(D) a letter of credit issued by a qualified financial institution; or

(E) another form of security prescribed by rules adopted by the *commission* [commissioner]; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The *executive director* [commissioner] may review and examine the reserve account. The amount of the security deposit may not be less than the greater of:

(1) \$25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the *executive director* [~~commissioner~~] on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least \$100 million.

(e) The *executive director* [~~commissioner~~] may not require a provider to meet any additional financial security requirement.

SECTION 13.009. Subsection (a), Section 1304.201, Occupations Code, is amended to read as follows:

(a) On a finding that a ground for disciplinary action exists under this chapter, the *commission* [~~commissioner~~] may impose an administrative sanction, including an administrative penalty, as provided by Chapter 51.

SECTION 13.010. The following laws are repealed:

(1) Subdivision (3), Section 1304.002, Occupations Code; and

(2) Subsection (b), Section 1304.201, Occupations Code.

SECTION 13.011. The changes in law made by this article applying to members of the Service Contract Providers Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 14. STAFF LEASING SERVICES

SECTION 14.001. Section 91.001, Labor Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "*Executive director*" means the executive director of the department.

SECTION 14.002. Subsections (a) and (b), Section 91.002, Labor Code, are amended to read as follows:

(a) The *commission* [~~commissioner~~] shall adopt rules as necessary to administer this chapter.

(b) Each person who offers staff leasing services is subject to this chapter and the rules adopted by the *commission* [~~commissioner~~].

SECTION 14.003. Subchapter A, Chapter 91, Labor Code, is amended by adding Section 91.008 to read as follows:

Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW. Section 51.405, Occupations Code, does not apply to this chapter.

SECTION 14.004. Subsection (b), Section 91.016, Labor Code, is amended to read as follows:

(b) A license issued or renewed by the department under this chapter is valid for *one year* [~~two years~~] from the date of the issuance or renewal. The department shall renew a license on receipt of a complete renewal application form and payment of the license renewal fee.

SECTION 14.005. Subsection (a), Section 91.017, Labor Code, is amended to read as follows:

(a) Each applicant for an original or renewal staff leasing services company license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule [~~in an amount not to exceed \$6,000 for the two-year license period~~].

SECTION 14.006. Subsections (b) and (d), Section 91.018, Labor Code, are amended to read as follows:

(b) A license holder may change the license holder's licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change ~~[in an amount not to exceed \$50]~~. A license holder may change the license holder's name on renewal of the license without the payment of the name change fee.

(d) A license holder may amend the name specified in its license to add a trade name, trademark, service mark, or parent company name. An amendment made under this subsection must comply with the requirements imposed under Subsection (a). The department may charge a fee ~~[not to exceed \$50]~~ for processing of such an amendment.

SECTION 14.007. Subsection (a), Section 91.019, Labor Code, is amended to read as follows:

(a) ~~The commission~~ ~~[commissioner]~~ by rule shall provide for the issuance of a limited license to a person who seeks to offer limited staff leasing services in this state.

SECTION 14.008. Section 91.020, Labor Code, is amended to read as follows:

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. ~~[(a)]~~ The department may take disciplinary action against a license holder on any of the following grounds:

(1) ~~[being convicted or having a controlling person of the license holder who is convicted of:~~

~~[(A) bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;~~

~~[(B) a crime that relates to the operation of a staff leasing service or the ability of the license holder or any controlling person of the license holder to operate a staff leasing service;~~

~~[(C) a crime that relates to the classification, misclassification, or under-reporting of employees under Subtitle A, Title 5;~~

~~[(D) a crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance; or~~

~~[(E) a crime that relates to fraud, deceit, or misconduct in the operation of a staff leasing service;~~

~~[(2)] engaging in staff leasing services or offering to engage in the provision of staff leasing services without a license;~~

~~(2) [(3)] transferring or attempting to transfer a license issued under this chapter;~~

~~(3) [(4)] violating this chapter or any order or rule issued by the executive director [department] or commission [commissioner] under this chapter;~~

~~(4) [(5)] failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;~~

~~(5) [(6)] failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the Texas Department of Insurance;~~

~~(6) [(7)] failing after the 31st day after the effective date of a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;~~

~~(7) [(8)] failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director [commissioner];~~

~~(8) [(9)] refusing, after reasonable notice, to meet reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency;~~

~~(9) [(10)] being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;~~

~~(10) [(11)] being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;~~

(11) [(12)] knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) [(13)] failing to maintain the net worth requirements required under Section 91.014; or

(13) [(14)] using staff leasing services to avert or avoid an existing collective bargaining agreement.

[(b) For purposes of this section, "conviction" includes a plea of nolo contendere or a finding of guilt, regardless of adjudication.]

SECTION 14.009. Subsection (c), Section 91.041, Labor Code, is amended to read as follows:

(c) The *commission* [commissioner] by rule may require a license holder to file other reports that are reasonably necessary for the implementation of this chapter.

SECTION 14.010. The following laws are repealed:

(1) Subdivision (5), Section 91.001, Labor Code; and

(2) Section 91.021, Labor Code.

SECTION 14.011. The change in law made by this article to Subsection (b), Section 91.016, Labor Code, applies only to a license issued or renewed on or after January 1, 2004. A license issued or renewed before January 1, 2004, is governed by that subsection as it existed immediately before that date, and that law is continued in effect for that purpose.

ARTICLE 15. TALENT AGENCIES

SECTION 15.001. Section 2105.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (3-a) to read as follows:

(2) "*Commission*" [*Commissioner*] means the *Texas Commission of Licensing and Regulation* [commissioner of licensing and regulation].

(3-a) "*Executive director*" means the executive director of the department.

SECTION 15.002. Section 2105.002, Occupations Code, is amended to read as follows:

Sec. 2105.002. POWERS AND DUTIES [OF DEPARTMENT]. (a) The *executive director* [department] shall:

[(1)] prescribe application forms for original and renewal certificates of registration.

(b) *The commission shall*[:]

(1) [(2)] set application and registration fees in amounts that are reasonable and necessary to defray the costs of administering this chapter; and

(2) [(3)] adopt rules as necessary to implement this chapter.

(c) [(b)] *The commission* [department] may[:]

[(1)] adopt rules as necessary to administer the registration program created under this chapter.

(d) *The department may*[: and

[(2)] take other action as necessary to enforce this chapter.

SECTION 15.003. Subchapter A, Chapter 2105, Occupations Code, is amended by adding Section 2105.003 to read as follows:

Sec. 2105.003. APPLICABILITY OF OTHER LAW. Section 51.405 does not apply to this chapter.

SECTION 15.004. Section 2105.053, Occupations Code, is amended to read as follows:

Sec. 2105.053. REGISTRATION FEE. The department may charge a talent agency a reasonable fee [not to exceed \$100] to cover the cost of filing a registration statement or an update of a registration statement.

SECTION 15.005. Section 2105.104, Occupations Code, is amended to read as follows:

Sec. 2105.104. AGENCY RECORDS. A certificate holder shall maintain records relating to the operation of the talent agency as required by *commission* [department] rule.

SECTION 15.006. Subsection (b), Section 2105.105, Occupations Code, is amended to read as follows:

(b) Funds deposited under this section may be disbursed only as prescribed by *commission* ~~[department]~~ rule.

SECTION 15.007. The following laws are repealed:

- (1) Subsections (b) and (c), Section 2105.055, Occupations Code;
- (2) Subsections (a), (b), and (c), Section 2105.056, Occupations Code; and
- (3) Section 2105.252, Occupations Code.

ARTICLE 16. TEMPORARY COMMON WORKER EMPLOYERS

SECTION 16.001. Section 92.002, Labor Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) “Executive director” means the executive director of the department.

SECTION 16.002. Subchapter A, Chapter 92, Labor Code, is amended by adding Section 92.004 to read as follows:

Sec. 92.004. *APPLICABILITY OF OTHER LAW.* Section 51.405, Occupations Code, does not apply to this chapter.

SECTION 16.003. Subsection (c), Section 92.022, Labor Code, is amended to read as follows:

(c) Information received by the *commission* ~~[commissioner]~~ or department under this section is privileged and confidential and is for the exclusive use of the *commission* ~~[commissioner]~~ or department. The information may not be disclosed to any other person except on the entry of a court order requiring disclosure or on the written consent of a person under investigation who is the subject of the records.

SECTION 16.004. The following laws are repealed:

- (1) Subdivision (2), Section 92.002, Labor Code; and
- (2) Subsections (b) and (c), Section 92.015, Labor Code.

ARTICLE 17. TRANSPORTATION SERVICE PROVIDERS

SECTION 17.001. Subdivision (2), Section 2401.001, Occupations Code, is amended to read as follows:

(2) “Department” means the ~~[Texas]~~ Department of *Public Safety* ~~[Licensing and Regulation]~~.

SECTION 17.002. The heading to Subchapter B, Chapter 2401, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES ~~[OF COMMISSION, COMMISSIONER, AND DEPARTMENT]~~

SECTION 17.003. Section 2401.052, Occupations Code, is amended to read as follows:

Sec. 2401.052. *EXAMINATION OR AUDIT.* (a) To administer this chapter, the department may:

- (1) examine:
 - (A) a record maintained under Section 2401.152; or
 - (B) a record or object the department determines is necessary to conduct a complete examination; or
- (2) question under oath any person who:
 - ~~[(A)] is associated with the business of a transportation service provider[; or~~
 - ~~[(B)] claims the person was negatively affected by a violation of this chapter committed by a transportation service provider].~~

(b) The department may periodically audit the business records of a transportation service provider ~~[registered under this chapter]~~.

SECTION 17.004. Section 2401.251, Occupations Code, is amended to read as follows:

Sec. 2401.251. CIVIL PENALTY. A transportation service provider who knowingly violates this chapter ~~[or a rule adopted under this chapter]~~ is liable for a civil penalty of not less than \$100 or more than \$500 for each violation.

SECTION 17.005. Section 2401.253, Occupations Code, is amended to read as follows:

Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT. (a) The ~~department~~ ~~[commissioner, with the assistance of the Texas Department of Public Safety,]~~ may investigate a violation of this chapter ~~[or a rule adopted under this chapter]~~.

(b) ~~Any~~ ~~[The commissioner or any]~~ law enforcement agency may file a complaint with:

- (1) the district attorney of Travis County; or
- (2) the prosecuting attorney of the county in which a violation is alleged to have occurred.

SECTION 17.006. The following laws are repealed:

- (1) Subdivision (1), Section 2401.001, Occupations Code;
- (2) Section 2401.051, Occupations Code;
- (3) Section 2401.053, Occupations Code;
- (4) Section 2401.054, Occupations Code;
- (5) Subchapter C, Chapter 2401, Occupations Code;
- (6) Section 2401.151, Occupations Code; and
- (7) Subchapter E, Chapter 2401, Occupations Code.

SECTION 17.007. (a) On November 1, 2003:

(1) all functions and activities relating to Chapter 2401, Occupations Code, performed by the Texas Department of Licensing and Regulation immediately before that date are transferred to the Department of Public Safety of the State of Texas;

(2) a reference in law or an administrative rule to the Texas Department of Licensing and Regulation that relates to Chapter 2401, Occupations Code, means the Department of Public Safety;

(3) a complaint, investigation, or other proceeding before the Texas Department of Licensing and Regulation that is related to Chapter 2401, Occupations Code, is transferred without change in status to the Department of Public Safety, and the Department of Public Safety assumes, as appropriate and without a change in status, the position of the Texas Department of Licensing and Regulation in an action or proceeding to which the Texas Department of Licensing and Regulation is a party;

(4) all money, contracts, leases, property, and obligations of the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, are transferred to the Department of Public Safety;

(5) all property in the custody of the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, is transferred to the Department of Public Safety; and

(6) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, is transferred to the Department of Public Safety.

(b) An offense or other violation related to Chapter 2401, Occupations Code, committed before the effective date of this Act is covered by the law as it existed on the date on which the offense or other violation was committed, and the former law is continued in effect for that purpose.

(c) Before November 1, 2003, the Texas Department of Licensing and Regulation may agree with the Department of Public Safety of the State of Texas to transfer any property of the Texas Department of Licensing and Regulation to the Department of Public Safety to implement the transfer required by this article.

(d) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Department of Licensing and Regulation shall continue to perform functions and activities under Chapter 2401, Occupations Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

ARTICLE 18. VEHICLE PROTECTION PRODUCT WARRANTORS

SECTION 18.001. Section 2, Article 9035, Revised Statutes, is amended by adding Subdivision (4-a) to read as follows:

(4-a) *"Executive director" means the executive director of the department.*

SECTION 18.002. Article 9035, Revised Statutes, is amended by adding Section 3A to read as follows:

Sec. 3A. *APPLICABILITY OF OTHER LAW. Section 51.405, Occupations Code, does not apply to this article.*

SECTION 18.003. Section 4, Article 9035, Revised Statutes, is amended to read as follows:

Sec. 4. **POWERS AND DUTIES [OF COMMISSIONER].** (a) The *commission* [~~commissioner~~] may adopt rules as necessary to implement this article.

(b) The *executive director* [~~commissioner~~] may conduct investigations of warrantors or other persons as reasonably necessary to enforce this article and to protect consumers in this state. On request of the *executive director* [~~commissioner~~], a warrantor shall make the warrantor's records maintained under Section 10 of this article regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this article.

SECTION 18.004. Subsections (a) through (g), Section 5, Article 9035, Revised Statutes, are amended to read as follows:

(a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the *commission* [~~department~~]. The advisory board shall advise[~~;~~

[~~(1)~~] the *commission* [~~commissioner~~] on adopting rules, [~~and~~] enforcing and administering this article,[~~;~~] and

[~~(2)~~] the *commission* [~~on~~] setting fees.

(b) The advisory board consists of six members appointed by the *presiding officer of the commission*, with the commission's approval, [~~commissioner~~] as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this article.

(c) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year. [~~The commissioner shall appoint the initial six board members to terms of six years or less in order to create staggered terms for the subsequent members of the advisory board.~~]

(d) The *presiding officer of the commission*, with the commission's approval, [~~commissioner~~] shall designate one member of the advisory board to serve as presiding officer of the board for two years.

(e) The *executive director* [~~commissioner~~] or the *executive director's* [~~commissioner's~~] designee serves as an ex officio nonvoting member of the advisory board.

(f) The *presiding officer of the commission*, with the commission's approval, [~~commissioner~~] shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

(g) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer of the board or the presiding officer of the commission [commissioner]. The advisory board shall meet at a location in this state designated by the [advisory] board.

SECTION 18.005. Subsections (c) and (d), Section 6, Article 9035, Revised Statutes, are amended to read as follows:

(c) Each registered warrantor shall pay an annual registration fee [not to exceed \$2,500] as set by the commission to cover the costs of administering this article. The department shall develop a tiered fee structure under which registration fees are assessed on warrantors based on the number of vehicle protection products sold within this state in the 12 months preceding the date of registration. The information submitted to the department under this section regarding the number of vehicle protection products sold by a warrantor may only be used by the department in determining the tiered fee structure. Information concerning the number of vehicle protection products sold by a warrantor submitted under this section is a trade secret and subject to Section 552.110, Government Code.

(d) The commission [commissioner] shall adopt rules providing for the renewal of a warrantor's registration.

SECTION 18.006. Subsection (e), Section 10, Article 9035, Revised Statutes, is amended to read as follows:

(e) The commission [commissioner] shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor.

SECTION 18.007. Subsections (a) and (c), Section 16, Article 9035, Revised Statutes, are amended to read as follows:

(a) The executive director [commissioner] may bring an action against a warrantor for injunctive relief under Section 51.352, Occupations Code, for a threatened or existing violation of this article or of the [commissioner's] orders or rules adopted under this article.

(c) For purposes of this section [and Section 15 of this article], violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this article occurred.

SECTION 18.008. The following laws are repealed:

- (1) Subdivision (2), Section 2, Article 9035, Revised Statutes; and
- (2) Section 15, Article 9035, Revised Statutes.

SECTION 18.009. The changes in law made by this article applying to members of the Vehicle Protection Product Warrantor Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 19. WATER WELL DRILLERS

SECTION 19.001. Section 1901.001, Occupations Code, is amended by adding Subdivisions (7-a) and (7-b) to read as follows:

(7-a) "Executive director" means the executive director of the department.

(7-b) "Groundwater conservation district" means a district to which Chapter 36, Water Code, applies.

SECTION 19.002. Section 1901.051, Occupations Code, is amended to read as follows:

Sec. 1901.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) The department shall [and] evaluate the qualifications of license applicants.

(c) [(b)] The executive director [commissioner] shall issue licenses to applicants who qualify.

SECTION 19.003. Section 1901.052, Occupations Code, is amended to read as follows:

Sec. 1901.052. RULES. (a) The *commission* ~~[commissioner, with advice and comment from the Texas Natural Resource Conservation Commission,]~~ shall adopt rules as necessary to enforce this chapter, including rules governing:

- (1) license applications;
- (2) qualifications of applicants;
- (3) standards of conduct for drillers, including standards for marking well drilling rigs and equipment; and
- (4) procedures and practices before the department.

(b) The *commission* ~~[commissioner]~~ may not adopt a rule under this chapter that:

- (1) regulates the installation or repair of well pumps and equipment by:
 - (A) a person on property the person owns or controls for the person's own use;
 - (B) an employee of a person described by Paragraph (A); or
 - (C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or
- (2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

SECTION 19.004. Subsection (a), Section 1901.101, Occupations Code, is amended to read as follows:

(a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the *presiding officer of the commission, with the commission's approval*, ~~[department]~~ as follows:

- (1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and
- (2) three public members.

SECTION 19.005. Section 1901.105, Occupations Code, is amended to read as follows:

Sec. 1901.105. PRESIDING OFFICER. The *presiding officer of the commission, with the commission's approval*, ~~[council]~~ shall *appoint* ~~[elect]~~ a member of the council to serve as presiding officer of the council for two years ~~[by a majority vote at the first meeting each year]~~.

SECTION 19.006. Subsections (a) and (d), Section 1901.109, Occupations Code, are amended to read as follows:

(a) The council may propose rules for adoption by the *commission* ~~[commissioner]~~ relating to the regulation of drillers registered under this chapter.

(d) The council shall assist the *commission* ~~[department]~~ in evaluating continuing education programs.

SECTION 19.007. Subsection (b), Section 1901.152, Occupations Code, is amended to read as follows:

(b) An applicant must pay to the department *an* ~~[a nonrefundable]~~ examination fee at the time the application is submitted.

SECTION 19.008. Section 1901.162, Occupations Code, is amended to read as follows:

Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The *commission* ~~[commissioner]~~ may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

SECTION 19.009. Subsection (a), Section 1901.251, Occupations Code, is amended to read as follows:

(a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by the *commission* and on forms prescribed by the *executive director* ~~[commissioner]~~. The well log

shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:

- (1) the depth, thickness, and character of the strata penetrated;
- (2) the location of water-bearing strata;
- (3) the depth, size, and character of casing installed; and
- (4) any other information required by rules adopted by the *commission* [commissioner].

SECTION 19.010. Subsection (b), Section 1901.252, Occupations Code, is amended to read as follows:

(b) The *commission* [commissioner] shall adopt rules specifying the manner for marking a rig.

SECTION 19.011. Section 1901.253, Occupations Code, is amended to read as follows:

Sec. 1901.253. **COMPLETING WATER WELL.** A driller shall complete a well under standards and procedures adopted by the *commission* [commissioner].

SECTION 19.012. Subsection (b), Section 1901.254, Occupations Code, is amended to read as follows:

(b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the *commission* [commissioner].

SECTION 19.013. Section 1901.255, Occupations Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the *commission* [commissioner].

(d) *Not later than the 30th day after the date the well is plugged, a [A] driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to:*

- (1) the board of directors of the groundwater conservation district in which the well is located, if the well is located in the boundaries of a groundwater conservation district; and*
- (2) the executive director [commissioner not later than the 30th day after the date the well is plugged].*

(e) The department or the groundwater conservation district in which the well is located shall furnish plugging report forms on request. The executive director shall prescribe the content of the forms.

SECTION 19.014. Subchapter F, Chapter 1901, Occupations Code, is amended by adding Section 1901.256 to read as follows:

*Sec. 1901.256. **ENFORCEMENT BY GROUNDWATER CONSERVATION DISTRICT.** (a) This section applies only to a violation related to a well located in the boundaries of the groundwater conservation district seeking to bring an action under this section.*

(b) A groundwater conservation district shall enforce compliance with Section 1901.255 related to wells located in the boundaries of the district.

(c) A groundwater conservation district may bring an action to enjoin a person from violating Section 1901.255.

(d) A groundwater conservation district may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter that is related to Section 1901.255.

(e) A groundwater conservation district may bring an action to recover a civil penalty under Section 1901.401 for a violation of this chapter or a rule adopted under this chapter related to Section 1901.255.

(f) The groundwater conservation district may bring the action in the county in which:

- (1) the offending activity occurred; or*
- (2) the person engaging in the activity resides.*

SECTION 19.015. Subchapter F, Chapter 1901, Occupations Code, is amended by adding Section 1901.257 to read as follows:

Sec. 1901.257. MEMORANDUM OF UNDERSTANDING REGARDING ABANDONED WELLS. (a) In this section, "abandoned well" and "deteriorated well" have the meanings assigned by Section 1901.255.

(b) The Texas Commission on Environmental Quality and the department shall by rule adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field offices of the Texas Commission on Environmental Quality relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells.

(c) Each groundwater conservation district in which an abandoned or deteriorated well is located shall join the memorandum of understanding adopted under Subsection (b).

SECTION 19.016. Section 1901.301, Occupations Code, is amended to read as follows:

Sec. 1901.301. GROUNDS FOR DISCIPLINARY ACTION. The *commission* [~~commissioner~~] may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

- (1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;
- (2) the failure to keep, deliver, or send a well log as required by Section 1901.251;
- (3) the failure to advise a person for whom a well is being drilled that:
 - (A) injurious water has been encountered;
 - (B) the water is a pollution hazard; and
 - (C) the well must be immediately plugged in an acceptable manner; or
- (4) the failure to complete a well in accordance with standards and procedures adopted by the *commission* [~~commissioner~~].

SECTION 19.017. The following laws are repealed:

- (1) Subdivision (2), Section 1901.001, Occupations Code;
- (2) Subsection (e), Section 1901.109, Occupations Code;
- (3) Subsection (b), Section 1901.155, Occupations Code;
- (4) Section 1901.156, Occupations Code;
- (5) Section 1901.157, Occupations Code;
- (6) Section 1901.160, Occupations Code;
- (7) Section 1901.205, Occupations Code;
- (8) Section 1901.302, Occupations Code;
- (9) Section 1901.303, Occupations Code;
- (10) Section 1901.304, Occupations Code; and
- (11) Subchapter H, Chapter 1901, Occupations Code.

SECTION 19.018. The changes in law made to Section 1901.255, Occupations Code, by this article do not affect the status of a complaint, investigation, or other proceeding that commenced before September 1, 2003. A groundwater conservation district, as appropriate and without a change in status, assumes the position of the executive director of the Texas Department of Licensing and Regulation in an action or proceeding relating to a well located in the boundaries of that groundwater conservation district.

SECTION 19.019. The changes in law made by this article applying to members of the Texas Water Well Drillers Advisory Council do not affect the entitlement of a member serving on the council immediately before September 1, 2003, to continue to serve and function as a member of the council for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

ARTICLE 20. WATER WELL PUMP INSTALLERS

SECTION 20.001. Section 1902.001, Occupations Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) *“Executive director” means the executive director of the department.*

SECTION 20.002. Section 1902.051, Occupations Code, is amended to read as follows:

Sec. 1902.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) *The department shall [and] evaluate the qualifications of license applicants.*

(c) [(b)] *The executive director [commissioner] shall issue licenses to applicants who qualify.*

SECTION 20.003. Section 1902.052, Occupations Code, is amended to read as follows:

Sec. 1902.052. RULES. (a) *The commission [commissioner] shall adopt rules as necessary to enforce this chapter.*

(b) *The commission [commissioner] may not adopt a rule under this chapter that:*

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person’s own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

SECTION 20.004. Subsection (b), Section 1902.152, Occupations Code, is amended to read as follows:

(b) An applicant must pay to the department *an [a nonrefundable]* examination fee at the time the application is submitted.

SECTION 20.005. Section 1902.162, Occupations Code, is amended to read as follows:

Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. *The commission [commissioner] may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.*

SECTION 20.006. Section 1902.251, Occupations Code, is amended to read as follows:

Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An installer shall install or repair pumps under standards and procedures adopted by the *commission [commissioner]* with the advice of the council.

SECTION 20.007. Subsection (b), Section 1902.252, Occupations Code, is amended to read as follows:

(b) To avoid injury or pollution, the installer shall repair or properly complete the well under standards and procedures adopted by the *commission [commissioner]*.

SECTION 20.008. The following laws are repealed:

- (1) Subdivision (2), Section 1902.001, Occupations Code;
- (2) Section 1902.101, Occupations Code;
- (3) Subsection (b), Section 1902.155, Occupations Code;
- (4) Section 1902.156, Occupations Code;
- (5) Section 1902.157, Occupations Code;
- (6) Section 1902.160, Occupations Code;
- (7) Section 1902.204, Occupations Code; and
- (8) Subchapters G and H, Chapter 1902, Occupations Code.

ARTICLE 21. WEATHER MODIFICATION; OCCUPATIONAL REGULATION

SECTION 21.001. Section 1.01, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended by amending Subdivision (1) and adding Subdivision (2-a) to read as follows:

(1) "*Commission*" [~~"Commissioner"~~] has the meaning assigned by Section 51.001, Occupations Code.

(2-a) "*Executive director*" means the executive director of the department.

SECTION 21.002. Article 1, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended by adding Section 1.02 to read as follows:

Sec. 1.02. *APPLICABILITY OF OTHER LAW. Sections 51.404 and 51.405, Occupations Code, do not apply to this article.*

SECTION 21.003. Section 1.11, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.11. RULES. The *commission* [~~department~~] may adopt rules necessary to:

- (1) exercise the powers and perform the duties under this article;
- (2) establish procedures and conditions for the issuance of licenses and permits under this article; and
- (3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the *commission* [~~department~~] considers necessary or desirable to minimize danger to health or property.

SECTION 21.004. Section 1.13, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.13. ADVISORY COMMITTEES. The *commission* [~~department~~] may establish advisory committees to advise the *commission* [~~department~~] and to make recommendations to the *commission* [~~department~~] concerning legislation, policies, administration, research, and other matters related to the department's duties, powers, or functions under this article. *If the commission establishes an advisory committee under this section, the presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as the presiding officer of the committee for a two-year term.*

SECTION 21.005. Section 1.16, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.16. INTERSTATE COMPACTS. The *commission* [~~commissioner~~] may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

SECTION 21.006. Subsection (b), Section 1.18, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department with approval of the *commission* [~~commissioner~~] may conduct and may contract for research and development activities relating to the purposes of this section.

SECTION 21.007. Section 1.31, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.31. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the *commission* [~~department~~] under Section 1.32 of this article, a person may not engage in activities for weather modification and control:

- (1) without a weather modification license and weather modification permit issued by the department; or
- (2) in violation of any term or condition of the license or permit.

SECTION 21.008. Section 1.32, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.32. EXEMPTIONS. (a) The *commission* [department] by rule, to the extent it considers exemptions practical, shall provide for exempting the following activities from the license and permit requirements of this article:

- (1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;
- (2) laboratory research and experiments;
- (3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and
- (4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

(b) The *commission* [department] by rule may modify or revoke an exemption.

SECTION 21.009. Subsection (v), Section 1.41, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(v) The *commission* [department] by rule shall define hail suppression as used in this section, using the most current scientifically accepted technological concepts.

SECTION 21.010. Section 1.64, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.64. PROCEDURES. The *commission* [department] by rule shall establish procedures for public notice and any public hearing under this subchapter.

SECTION 21.011. Section 1.65, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.65. HEARINGS. A hearing under this *article* [subchapter] shall be conducted in accordance with the hearing rules adopted by the *commission* [department] and the applicable provisions of *Chapter 51, Occupations Code, and Chapter 2001, Government Code*.

SECTION 21.012. Section 1.66, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.66. CONSENT. If a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, the *commission* [commissioner] may revoke or suspend the permit or license without a hearing.

SECTION 21.013. The following laws are repealed:

- (1) Section 1.34, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes);
- (2) Section 1.38, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes); and
- (3) Section 1.68, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes).

ARTICLE 22. WEATHER MODIFICATION; CONTROL GRANT PROGRAM

SECTION 22.001. Section 20.001, Agriculture Code, as added by Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 20.001. FINDINGS. The legislature finds that weather modification and control activities may have a significant impact on Texas agriculture. The legislature further finds that the *Texas Department of Licensing and Regulation* [Agriculture] is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

SECTION 22.002. Section 20.002, Agriculture Code, as added by Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 20.002. DEFINITIONS [DEFINITION]. In this chapter:

- (1) "*Commission*" means the *Texas Commission of Licensing and Regulation*.
- (2) "*Department*" means the *Texas Department of Licensing and Regulation*.

(3) “~~Weather~~[-“weather] modification and control” means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

SECTION 22.003. Section 20.004, Agriculture Code, as added by Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 20.004. RULES. The *commission* [department] may adopt rules necessary to administer this chapter.

SECTION 22.004. (a) On the effective date of this Act, in accordance with the General Appropriations Act enacted by the 78th Legislature:

(1) all powers, duties, obligations, rights, and contracts of the Department of Agriculture associated with the weather modification and control grant program are transferred to the Texas Department of Licensing and Regulation;

(2) all authority to fill full-time equivalent positions to administer the weather modification and control grant program and all unspent and unobligated appropriations to and other money held by the Department of Agriculture in connection with the program are transferred to the Texas Department of Licensing and Regulation; and

(3) all files, records, equipment, and other property of the Department of Agriculture that are used by that agency in connection with the administration of the weather modification and control grant program become the property of the Texas Department of Licensing and Regulation, but remain in the same location unless moved in accordance with the memorandum of understanding adopted under Subsection (b) of this section.

(b) The Department of Agriculture and the Texas Department of Licensing and Regulation shall adopt a memorandum of understanding not later than the 30th day after the effective date of this Act that provides for the transfer, by that date, of any files, records, equipment, property, and personnel necessary to accomplish the transfer of the weather modification and control grant program from the Department of Agriculture to the Texas Department of Licensing and Regulation.

ARTICLE 23. VALET PARKING SERVICES FINANCIAL RESPONSIBILITY

SECTION 23.001. Section 2, Article 9035, Revised Statutes, is amended by adding Subdivision (10) to read as follows:

(10) “*Vehicle protection service*” means a valet parking service as defined by Section 686.001(3), Transportation Code.

SECTION 23.002. Subtitle H, Title 7, Transportation Code, is amended by adding Chapter 686 to read as follows:

CHAPTER 686. VALET PARKING SERVICES

Sec. 686.001. DEFINITIONS. In this chapter:

(1) “*Financial responsibility*” means the ability to respond in damages for liability for an accident that:

(A) occurs after the effective date of the document evidencing the establishment of the financial responsibility; and

(B) arises out of the operation of a motor vehicle by an employee of a valet parking service.

(2) “*Public accommodation*” means any:

(A) inn, hotel, or motel;

(B) restaurant, cafeteria, or other facility principally engaged in selling food for consumption on the premises;

(C) bar, nightclub, or other facility engaged in selling alcoholic beverages for consumption on the premises;

(D) motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; or

(E) other facility used by or open to members of the public.

(3) "Valet parking service" means a parking service through which the motor vehicles of patrons of a public accommodation are parked for a fee by a third party who is not an employee of the public accommodation.

Sec. 686.002. **REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR VALET PARKING SERVICES.** A person may not operate a valet parking service unless financial responsibility for each employee who operates a motor vehicle for the service is established through:

(1) a motor vehicle liability or comprehensive general liability and garage insurance policy in an amount established by Section 686.004;

(2) a surety bond filed under Section 601.121; or

(3) a deposit in the amount of \$450,000 under Section 601.122, notwithstanding any other amount prescribed by that section.

Sec. 686.003. **EVIDENCE OF FINANCIAL RESPONSIBILITY.** (a) The owner or operator of a valet parking service shall provide evidence of financial responsibility in the same manner as required under Section 601.053.

(b) In addition to complying with Subsection (a), an owner or operator of a valet parking service shall exhibit, for public inspection, evidence of financial responsibility at a public accommodation whose patrons use the service.

Sec. 686.004. **MINIMUM COVERAGE AMOUNTS.** (a) The minimum amounts of motor vehicle liability insurance coverage required to establish financial responsibility under this chapter are:

(1) \$100,000 for bodily injury to or death of one person in one accident;

(2) \$300,000 for bodily injury to or death of two or more persons in one accident, subject to the amount provided by Subdivision (1) for bodily injury to or death of one of the persons; and

(3) \$50,000 for damage to or destruction of property of others in one accident.

(b) The comprehensive general liability insurance must be on a broad form and provide limits of liability for bodily injury and property damage of not less than \$300,000 combined single limit or the equivalent.

(c) The garage insurance must provide limits of liability for bodily injury and property damage of not less than \$300,000 combined single limit, or the equivalent, and must provide the following coverages:

(1) comprehensive and collision coverage for physical damage;

(2) coverage for vehicle storage; and

(3) coverage for a vehicle driven by or at the direction of the valet parking service.

Sec. 686.005. **COMMON LAW DEFENSES.** In an action against an owner or operator of a valet parking service that has not established financial responsibility as required by this chapter to recover damages for personal injuries, death, or property damage sustained in a motor vehicle accident arising out of the operation of a valet parking service, it is not a defense that the party who brings the action:

(1) was guilty of contributory negligence; or

(2) assumed the risk of injury, death, or property damage.

Sec. 686.006. **OPERATION OF MOTOR VEHICLE IN VIOLATION OF FINANCIAL RESPONSIBILITY REQUIREMENT; OFFENSE.** (a) A person commits an offense if the person, while in the course and scope of the person's employment with a valet parking service, operates a motor vehicle of a patron of the service without the financial responsibility required by this chapter.

(b) Except as provided by Subsections (c) and (d), an offense under this section is a misdemeanor punishable by a fine of not less than \$175 or more than \$350.

(c) *If a person has been previously convicted of an offense under this section, an offense under this section is a misdemeanor punishable by a fine of not less than \$350 or more than \$1,000.*

(d) *If the court determines that a person who has not been previously convicted of an offense under this section is economically unable to pay the fine, the court may reduce the fine to not less than \$175.*

Sec. 686.007. DEFENSE: FINANCIAL RESPONSIBILITY IN EFFECT AT TIME OF ALLEGED OFFENSE. It is a defense to prosecution under Section 686.002 that the person charged produces one of the documents listed in Section 601.053 that was valid at the time the offense is alleged to have occurred.

SECTION 23.003. (a) Except as provided in Subsection (d) of this section, this article takes effect March 1, 2004.

(b) The Texas Commission of Licensing and Regulation shall analyze the potential financial impact of Chapter 686, Transportation Code, as added by this article, on prices paid by consumers who use valet parking services. Not later than January 1, 2004, the commission shall report to the secretary of state for publication in the Texas Register whether the commission's analysis concludes that implementation of Chapter 686, Transportation Code, would result in an increase of more than 25 percent in the average price paid by a consumer for valet parking services.

(c) Not later than February 1, 2004, the secretary of state shall publish the conclusion of the Texas Commission of Licensing and Regulation's analysis in the Texas Register.

(d) If the Texas Commission of Licensing and Regulation concludes that implementation of Chapter 686, Transportation Code, as added by this article, would result in an increase of more than 25 percent in the average price paid by a consumer for valet parking services, this article has no effect.

ARTICLE 24. RENTAL-PURCHASE AGREEMENTS

SECTION 24.001. Section 35.71, Business & Commerce Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) *"Loss damage waiver" means a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.*

SECTION 24.002. Subsection (c), Section 35.72, Business & Commerce Code, is amended to read as follows:

(c) A rental-purchase agreement may not contain a provision:

- (1) requiring a confession of judgment;
- (2) authorizing a merchant or an agent of the merchant to commit a breach of the peace in the repossession of merchandise;
- (3) waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant;
- (4) requiring the purchase of insurance or a loss damage waiver from the merchant to cover the merchandise;
- (5) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than seven days *if the payment is due monthly, or is delinquent for more than three days if the payment is due more frequently than monthly*, and the charge or fee is in an amount equal to not more than the lesser of five percent of the delinquent payment or \$5, and not less than \$2; or
- (6) requiring a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment in order to acquire ownership of the merchandise. In no event shall the consumer be required to pay a sum greater than the total amount to be paid to acquire ownership, as disclosed in Subsection (g)(3) of this section.

SECTION 24.003. Subchapter F, Chapter 35, Business & Commerce Code, is amended by adding Sections 35.721 and 35.722 to read as follows:

Sec. 35.721. LOSS DAMAGE WAIVER. (a) In addition to other charges permitted by this subchapter, a consumer may contract for a loss damage waiver. A loss damage waiver is not insurance.

(b) A merchant may not sell a loss damage waiver unless the consumer agrees to the waiver in writing. A merchant may not impose or require the purchase of a loss damage waiver as a mandatory charge.

(c) A loss damage waiver may exclude loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise, or any other damage that is intentionally caused by the consumer or that results from the consumer's wilful or wanton misconduct.

(d) A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver.

(e) A merchant may charge a periodic fee for a loss damage waiver that may not exceed 10 percent of the periodic rental payment.

(f) A contract that offers a loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your homeowners' or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy."

(g) A merchant may not sell a loss damage waiver unless the form of the contract containing the waiver has been approved by the Texas Department of Licensing and Regulation.

(h) The Texas Commission of Licensing and Regulation shall by rule:

(1) provide the method for annual submission of all contracts, including amendments to a contract, that contain a loss damage waiver, for review by the Texas Department of Licensing and Regulation; and

(2) set a reasonable fee to be paid by the merchant for the review of contract forms under Subdivision (1) and for the administration of this subchapter by the Texas Department of Licensing and Regulation.

Sec. 35.722. ENFORCEMENT; INVESTIGATION; HEARING. (a) In this section:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(b) The department shall enforce Section 35.721 and may, as necessary, investigate a merchant who has one or more contracts that include a loss damage waiver.

(c) A person may file a complaint alleging a violation of Section 35.721 with the department. The department shall investigate the alleged violation on receipt of the complaint, and may inspect any record relevant to the complaint.

(d) If, as a result of an investigation, the department determines that a violation may have occurred, the commission shall provide an opportunity for a hearing in the manner provided for a contested case under Chapter 2001, Government Code.

(e) If, after opportunity for hearing, the commission determines that the merchant has violated Section 35.721, the commission may:

(1) impose an administrative penalty under Chapter 51, Occupations Code; or

(2) award the complainant damages in an amount up to the amount of the contract price for the merchandise.

SECTION 24.004. The change in law made by this article applies only to a rental-purchase agreement entered into on or after the effective date of this Act. A rental-purchase agreement entered into before the effective date of this Act is governed by the law in effect on the date the rental-purchase agreement was entered into, and the former law is continued in effect for that purpose.

ARTICLE 25. ON-LINE LICENSE INFORMATION

SECTION 25.001. Subchapter I, Chapter 2054, Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Sections 2054.255 and 2054.256 to read as follows:

Sec. 2054.255. *CHANGE OF ADDRESS AND OTHER INFORMATION.* (a) *The system adopted under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, must allow a person regulated by one or more licensing authorities to file a single change of address on-line with the department. The department shall provide the new address to each appropriate licensing authority.*

(b) *The department may expand the system to include additional categories of updated information that license holders may need to provide to more than one licensing authority.*

(c) *If the department uses TexasOnline to implement the system, the department may recover costs incurred under this section as provided by Section 2054.252, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.*

Sec. 2054.256. *SHARING OF INFORMATION.* (a) *Each licensing authority shall electronically share information regarding license holders, especially information regarding disciplinary information, with other licensing authorities to the extent it is feasible to do so and allowed by other law, under appropriate controls for the privacy, security, accuracy, and, when applicable, confidentiality of the information.*

(b) *A licensing authority may only use information it receives electronically under this section for regulatory purposes.*

ARTICLE 26. GENERAL CONFORMING AMENDMENTS

SECTION 26.001. Section 57.044, Government Code, is amended to read as follows:

Sec. 57.044. *COURT INTERPRETER LICENSE.* To qualify for a court interpreter license under this subchapter, an individual must apply on a form prescribed by the *executive director* [~~commissioner~~] and demonstrate, in the manner required by the *executive director* [~~commissioner~~], reasonable proficiency in interpreting English and court proceedings for individuals who can hear but who do not comprehend English or communicate in English.

SECTION 26.002. Subsections (a) and (c), Section 57.046, Government Code, are amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in interpreting under this subchapter.

(c) Examinations shall be offered in the state at least twice a year at times and places designated by the *executive director* [~~commissioner~~].

SECTION 26.003. The heading to Section 57.047, Government Code, is amended to read as follows:

Sec. 57.047. [~~COMMISSIONER AND~~] DEPARTMENT DUTIES; INSPECTIONS.

SECTION 26.004. Subsection (a), Section 57.047, Government Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall enforce this subchapter.

SECTION 26.005. Section 754.020, Health and Safety Code, is amended to read as follows:

Sec. 754.020. *DEPOSIT OF FEES.* Fees collected under this subchapter shall be deposited to the credit of an account in the general revenue fund that may be used by the *executive director* [~~commissioner~~] only to administer and enforce this subchapter and to reimburse expenses of board members provided by this subchapter.

SECTION 26.006. Section 754.021, Health and Safety Code, is amended to read as follows:

Sec. 754.021. *LIST OF INSPECTORS; PERSONNEL.* The *executive director* [~~commissioner~~] may:

(1) compile a list of ASME-QEI-1 certified inspectors who are registered with the department to perform an inspection under this subchapter; and

(2) employ personnel as necessary to enforce this subchapter.

SECTION 26.007. Section 754.022, Health and Safety Code, is amended to read as follows:

Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the *executive director* [~~commissioner~~] learns of a situation of noncompliance under Section 754.019, the *executive director* [~~commissioner~~] shall send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

SECTION 26.008. Subsections (a), (c), and (d), Section 755.023, Health and Safety Code, are amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:

(1) be a resident of this state and a citizen of the United States;

(2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers; and

(3) pass a written examination that demonstrates the necessary ability to judge the safety of boilers.

(c) As needed, the *executive director* [~~commissioner~~] shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The *executive director* [~~commissioner~~] may employ clerical assistants as necessary to carry out this chapter.

SECTION 26.009. Subsections (a), (b), (f), and (g), Section 755.024, Health and Safety Code, are amended to read as follows:

(a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the *executive director* [~~commissioner~~] and must be continuously employed by an inspection agency.

(b) The *executive director* [~~commissioner~~], by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(f) After proper investigation, the *executive director* [~~commissioner~~] may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(g) For good cause, the *executive director* [~~commissioner~~] may rescind a commission issued by this state.

SECTION 26.010. Subsections (a), (f), and (g), Section 755.025, Health and Safety Code, are amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall require each boiler to be inspected internally and externally at the time of initial installation and at subsequent intervals as provided by this section. The *executive director* [~~commissioner~~] may provide that the inspection be performed by any inspector.

(f) The *executive director* [~~commissioner~~] shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The *executive director* [~~commissioner~~] and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The *executive director* [~~commissioner~~] may authorize the inspection of a boiler at any reasonable time if the *executive director* [~~commissioner~~] determines that the boiler may be in an unsafe condition. The *executive director* [~~commissioner~~] shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the *executive director* [~~commissioner~~] notifies the inspection agency. An additional charge may not be made for the joint inspection.

SECTION 26.011. Subsections (a), (c), (d), and (e), Section 755.026, Health and Safety Code, are amended to read as follows:

(a) With the approval of the *executive director* [~~commissioner~~] and the inspection agency that has jurisdiction for the power boiler, the interval between internal inspections may be extended to a period not exceeding a total of 48 months. For other unfired steam boilers or steam collection or liberation drums of process steam generators, the inspection interval may be extended to the next scheduled downtime of the boiler, but not exceeding a total of 84 months.

(c) The *executive director* [~~commissioner~~] and the inspection agency may grant an additional extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met.

(d) If an extended period between internal inspections is approved by the *executive director* [~~commissioner~~] and the inspection agency, the *executive director* [~~commissioner~~] shall issue a new certificate of operation for the extended period of operation.

(e) If the interval between internal inspections of a gas fired boiler is extended under Subsection (a), the *executive director* [~~commissioner~~] and inspection agency shall require that an inspection of the gas regulator or pressure reducing valve that services the boiler be performed as part of the next regularly scheduled external certificate inspection of the boiler to verify proper venting of gas to a safe point of discharge.

SECTION 26.012. Subsections (a) and (c), Section 755.027, Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the *executive director* [~~commissioner~~] in the manner specified by the *executive director* [~~department~~].

(c) An inspection agency shall notify the *executive director* [~~commissioner~~] in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect.

SECTION 26.013. Section 755.028, Health and Safety Code, is amended to read as follows:

Sec. 755.028. SPECIAL INSPECTIONS. The *executive director* [~~commissioner~~] may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels.

SECTION 26.014. Subsection (a), Section 755.029, Health and Safety Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall issue to the owner or operator of a boiler a certificate of operation for the boiler if after a certificate inspection:

- (1) the boiler is found to be in a safe condition for operation; and
- (2) the owner or operator has paid the fees assessed under Section 755.030.

SECTION 26.015. Section 755.042, Health and Safety Code, is amended to read as follows:

Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the *executive director* [~~commissioner~~] may petition a district court for an injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the *executive director* [~~commissioner~~] determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the

county in which the boiler is located or in Travis County. It is not necessary for the prosecutor to verify the pleadings or for the state to execute a bond.

(b) The *executive director's* [~~commissioner's~~] affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order.

SECTION 26.016. Subsection (a), Section 91.003, Labor Code, is amended to read as follows:

(a) Each state agency that in performing duties under other law affects the regulation of staff leasing services shall cooperate with the department[, the ~~commissioner~~,] and other state agencies as necessary to implement and enforce this chapter.

SECTION 26.017. Subsection (c), Section 91.015, Labor Code, is amended to read as follows:

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. The department shall provide the applicant at least 30 days after the date of the notice to address the reasons for the denial. For good cause and on a showing of a good faith effort to remedy the reasons for the denial, the *executive director* [~~commissioner~~] may grant an additional 30 days to remedy the reasons for denial.

SECTION 26.018. Section 91.048, Labor Code, is amended to read as follows:

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the *executive director* [~~commissioner~~] the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client company;

(B) each client company contract; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget, of each client company;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

SECTION 26.019. Subsection (a), Section 91.062, Labor Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] may notify the attorney general of a violation of this chapter. The attorney general may apply to a district court in Travis County for permission to file for quo warranto relief, injunctive relief, or both.

SECTION 26.020. Subsection (a), Section 92.014, Labor Code, is amended to read as follows:

(a) The department shall issue a temporary common worker employer license to a person who meets the application requirements established by the *executive director* [~~commissioner~~] and pays the application and registration fees set by the commission.

SECTION 26.021. Subsection (a), Section 92.031, Labor Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally violates:

(1) this chapter;

(2) a rule adopted under this chapter; or

(3) an administrative order adopted ~~[by the commissioner]~~ under this chapter.

SECTION 26.022. Subsections (a) and (c), Section 1152.154, Occupations Code, are amended to read as follows:

(a) An applicant for registration must file an application with the department on a printed form prescribed by the *executive director* ~~[commissioner]~~.

(c) The department shall refund the registration fee if the *executive director* ~~[commissioner]~~ does not approve the application.

SECTION 26.023. Section 1152.156, Occupations Code, is amended to read as follows:

Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX CONSULTANT.

(a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:

(1) complete at least 15 classroom hours of educational courses approved by the *executive director* ~~[commissioner]~~, including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services; or

(2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

(b) The *executive director* ~~[commissioner]~~ may give appropriate credit to an initial applicant for:

(1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and

(2) educational programs or courses completed by the applicant on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

SECTION 26.024. Section 1152.159, Occupations Code, is amended to read as follows:

Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT APPLICANTS. (a) The *executive director* ~~[commissioner]~~ shall grant credit to an applicant for registration as a senior property tax consultant as follows:

(1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education/as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;

(2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and

(3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.

(b) The *executive director* ~~[commissioner]~~ may grant additional credits to an applicant for registration as a senior property tax consultant for:

(1) successful completion of educational programs or courses on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;

(2) completion of other educational programs or courses; or

(3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional designations obtained from recognized associations, institutes, or organizations.

(c) The *executive director* [commissioner] may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the *executive director* [commissioner] shall consider:

(1) the nature of the program or course;

(2) the number of actual instructional hours in the program or course;

(3) whether an examination is required for successful completion of the program or course; and

(4) other factors the *executive director* [commissioner] determines appropriate.

SECTION 26.025. Section 1152.162, Occupations Code, is amended to read as follows:

Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The *executive director* [commissioner] shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.

(b) The *executive director* [commissioner] shall issue to an applicant who qualifies for registration the appropriate certificate of registration.

SECTION 26.026. Section 1202.055, Occupations Code, is amended to read as follows:

Sec. 1202.055. SECRETARY; PERSONNEL. The *executive director* [commissioner] shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

SECTION 26.027. Subsections (b) and (c), Section 1202.105, Occupations Code, are amended to read as follows:

(b) The *executive director* [commissioner] shall recommend qualified third-party inspectors and design review agencies to the council.

(c) The *executive director* [commissioner] shall publish a list of all approved inspectors and design review agencies.

SECTION 26.028. Subdivision (12), Section 1302.002, Occupations Code, is amended to conform to Section 1, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(12) "Mechanical integrity" means the condition of a product, a system, or equipment installed in accordance with its intended purpose and according to:

(A) standards at least as strict as the standards provided by:

(i) the Uniform Mechanical Code ~~[published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or their successor organizations]; and [or]~~

(ii) the *International [Standard] Mechanical Code* ~~[published by the Southern Building Code Congress International, Inc., or its successor organization];~~

(B) all other applicable codes; and

(C) the manufacturer's specifications.

SECTION 26.029. Section 1302.102, Occupations Code, is amended to read as follows:

Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The *executive director* [commissioner] shall set insurance requirements for a license holder under this chapter.

(b) The *executive director* [~~commissioner~~] may waive the insurance requirements for a license holder who does not engage in air conditioning and refrigeration contracting for the public.

SECTION 26.030. Section 1302.151, Occupations Code, is amended to read as follows:

Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The *executive director* [~~commissioner~~] shall prepare information of consumer interest describing:

- (1) the functions performed by the *executive director* [~~commissioner~~] under this chapter; and
- (2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the *executive director* [~~commissioner~~].

(c) The *executive director* [~~commissioner~~] shall make the information available to the public.

SECTION 26.031. Section 1302.203, Occupations Code, is amended to read as follows:

Sec. 1302.203. EX OFFICIO MEMBERS. The *executive director* [~~commissioner~~] and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

SECTION 26.032. Subsection (a), Section 1302.253, Occupations Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall issue a Class A or Class B air conditioning and refrigeration contractor license.

SECTION 26.033. Subsections (a) and (c), Section 1302.256, Occupations Code, are amended to read as follows:

(a) An applicant for a license must submit a verified application on a form prescribed by the *executive director* [~~commissioner~~].

(c) The application must be accompanied by:

- (1) a statement containing evidence satisfactory to the *executive director* [~~commissioner~~] of the applicant's practical experience required by Section 1302.255(a)(2); and
- (2) the examination fee.

SECTION 26.034. Section 1302.257, Occupations Code, is amended to read as follows:

Sec. 1302.257. EXAMINATIONS. (a) The *executive director* [~~commissioner~~] shall prescribe:

- (1) a separate examination for each class of license; and
- (2) within each class of license, a separate examination for:
 - (A) an environmental air conditioning endorsement; and
 - (B) a commercial refrigeration and process cooling or heating endorsement.

(b) The *executive director* [~~commissioner~~] shall prescribe the method and content of an examination administered under this chapter and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

(c) The examination shall be offered on a monthly basis or more frequently as determined by the *executive director* [~~commissioner~~].

(d) The examination shall be offered at locations within the state as determined by the *executive director* [~~commissioner~~]. The examination may be offered by computer at locations within the state as determined by the *executive director* [~~commissioner~~].

SECTION 26.035. Subsection (a), Section 1302.260, Occupations Code, is amended to read as follows:

(a) On payment of the license fee, the *executive director* [~~commissioner~~] shall issue an air conditioning and refrigeration contractor license to an applicant who:

- (1) meets the requirements of this subchapter;

(2) provides evidence of insurance coverage required by the *executive director* [commissioner] in accordance with this chapter; and

(3) passes the applicable examination.

SECTION 26.036. Subsection (b), Section 1302.303, Occupations Code, is amended to read as follows:

(b) The municipality shall report a violation of the ordinance to the *executive director* [commissioner] not later than the 10th day after the date the municipality acts to enforce the ordinance.

SECTION 26.037. Section 1302.451, Occupations Code, is amended to read as follows:

Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS. (a) The *executive director* [commissioner] may issue an emergency order as necessary to enforce this chapter if the *executive director* [commissioner] determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The *executive director* [commissioner] may issue the emergency order without notice and hearing or with any notice and hearing the *executive director* [commissioner] considers practicable under the circumstances. The *executive director* [commissioner] shall set the time and place for a hearing to affirm, modify, or set aside an emergency order that was issued without a hearing.

(c) The *executive director* [commissioner] may issue a cease and desist order.

SECTION 26.038. Section 1304.007, Occupations Code, is amended to read as follows:

Sec. 1304.007. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR [COMMISSIONER]. (a) The *executive director* [commissioner] may investigate a provider, administrator, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the *executive director* [commissioner], a provider shall make the records required by Section 1304.155 available to the *executive director* [commissioner] as necessary to enable the *executive director* [commissioner] to reasonably determine compliance with this chapter.

SECTION 26.039. Section 1304.102, Occupations Code, is amended to read as follows:

Sec. 1304.102. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the *executive director* [commissioner].

(b) The application must:

(1) be in the form prescribed by the *executive director* [commissioner]; and

(2) include evidence satisfactory to the *executive director* [commissioner] of compliance with the applicable financial security requirements prescribed by Section 1304.151.

SECTION 26.040. Section 1304.104, Occupations Code, is amended to read as follows:

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD. Information concerning the number of service contracts sold by a provider that is submitted under Section 1304.103:

(1) is a trade secret to which Section 552.110, Government Code, applies; and

(2) may be used only by the *executive director* [commissioner] and the department in developing the tiered fee schedule under Section 1304.103.

SECTION 26.041. Subsection (b), Section 1304.152, Occupations Code, is amended to read as follows:

(b) The insurer may not cancel the policy until the insurer delivers to the provider a written notice of cancellation that complies with the notice requirements prescribed by Articles 21.49–2A and 21.49–2B, Insurance Code, for cancellation of an insurance policy under those articles. The provider shall forward a copy of the cancellation notice to the *executive director* [commissioner] not later than the 15th business day after the date the notice is delivered to the provider. Cancellation of the policy does not reduce the insurer's responsibility for a service contract issued by the provider and insured under the policy before the date of the cancellation.

SECTION 26.042. Subsections (b) and (d), Section 1304.155, Occupations Code, are amended to read as follows:

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the *executive director* [commissioner].

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the *executive director* [commissioner] with proof satisfactory to the *executive director* [commissioner] that the provider has discharged all obligations to service contract holders in this state.

SECTION 26.043. Section 1304.202, Occupations Code, is amended to read as follows:

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The *executive director* [commissioner] may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the *executive director* [commissioner] may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

- (1) \$2,500 for each violation; or
- (2) \$50,000 in the aggregate for all violations of a similar nature.

SECTION 26.044. Section 1802.002, Occupations Code, is amended to read as follows:

Sec. 1802.002. APPLICABILITY. This chapter does not apply to:

- (1) a sale conducted by order of a United States court under Title 11, United States Code;
- (2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;
- (3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;
- (4) a sale conducted by an individual of the individual's property if the individual is not engaged in the business of selling property as an auctioneer on a recurring basis;
- (5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;
- (6) a foreclosure sale of personal property personally conducted by:
 - (A) a person who holds a security interest in the property, including a mortgage; or
 - (B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:
 - (i) the employee or agent is not otherwise engaged in the auction business; and
 - (ii) all property for sale in the auction is subject to a security agreement;
- (7) a sale conducted by sealed bid;
- (8) an auction conducted only for student training purposes as part of a course of study approved by the *executive director* [commissioner] for auctioneers;
- (9) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;
- (10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association; or
- (11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:
 - (A) is part of a fair that is organized under state, county, or municipal authority; and
 - (B) involves only the sale of property owned by the organization's members.

SECTION 26.045. Subsection (a), Section 1802.051, Occupations Code, is amended to read as follows:

(a) A person may not act as an auctioneer or associate auctioneer in an auction held in this state unless the person is an individual who holds a license issued by the *executive director* [commissioner] under this chapter.

SECTION 26.046. Section 1802.054, Occupations Code, is amended to read as follows:

Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a license must apply to the *executive director* [commissioner] on a form provided by the *executive director* [commissioner] that establishes the applicant's eligibility for the license. The application must be accompanied by:

- (1) the required bond;
- (2) the required license fee; and
- (3) either:

(A) the permit number of a sales tax permit issued to the applicant by the comptroller under Subchapter F, Chapter 151, Tax Code; or

(B) proof of exemption from the tax permit requirement under Chapter 151, Tax Code.

SECTION 26.047. Subsections (a) and (b), Section 1802.055, Occupations Code, are amended to read as follows:

(a) An individual who establishes that the individual is eligible for an auctioneer's license may apply to the *executive director* [commissioner] to take the license examination. The application must be accompanied by the examination fee.

(b) On receipt of an examination application and fee, the *executive director* [commissioner] shall furnish the applicant with:

- (1) study materials and references on which the examination will be based; and
- (2) a schedule specifying the dates and places the examination will be offered.

SECTION 26.048. Subsections (b) and (c), Section 1802.056, Occupations Code, are amended to read as follows:

(b) The license examination shall be offered at least four times each year at locations designated by the *executive director* [commissioner].

(c) The *executive director* [commissioner] shall prepare:

- (1) examinations for an auctioneer's license; and
- (2) study and reference materials on which the examinations are based.

SECTION 26.049. Subsection (a), Section 1802.152, Occupations Code, is amended to read as follows:

(a) The department is the manager of the fund and shall:

- (1) administer the fund without appropriation;
- (2) maintain books and records as required by the *executive director* [commissioner];
- (3) appear at hearings or judicial proceedings; and
- (4) invest and reinvest the fund's assets as instructed by the *executive director* [commissioner].

SECTION 26.050. Subsection (b), Section 1802.155, Occupations Code, is amended to read as follows:

(b) If the fund contains insufficient assets to pay the consumer:

- (1) the department shall record the time and date an order for payment to a consumer was received; and
- (2) the *executive director* [commissioner] shall pay consumers for whom an order is recorded under Subdivision (1) as funds become available in the order of the recorded time and date of the order.

SECTION 26.051. Section 1802.156, Occupations Code, is amended to read as follows:

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The *executive director* [~~commissioner~~] may use amounts in excess of \$250,000 in the fund to:

- (1) advance education and research in the auctioneering profession for the benefit of license holders and to improve and increase the efficiency of the industry;
- (2) underwrite educational seminars, training centers, and other educational projects for the use and benefit of license holders;
- (3) sponsor, contract, and underwrite other educational and research projects that advance the auctioneering profession in this state; and
- (4) cooperate with associations of auctioneers and other groups for the education and advancement of the auctioneering profession in this state.

SECTION 26.052. Subsections (a) and (b), Section 1802.205, Occupations Code, are amended to read as follows:

(a) If the department's determination under Section 1802.202 is not disputed by the auctioneer or the aggrieved party, the *executive director* [~~commissioner~~] shall pay the claim from the fund, subject to Section 1802.206.

(b) If a hearing is held on the department's determination, the *executive director* [~~commissioner~~] shall pay to the aggrieved party the amount of actual damages determined by the *executive director* [~~commissioner~~].

SECTION 26.053. Subsection (a), Section 1802.206, Occupations Code, is amended to read as follows:

(a) The *executive director* [~~commissioner~~] may not pay a single aggrieved party more than \$10,000.

SECTION 26.054. Section 1802.208, Occupations Code, is amended to read as follows:

Sec. 1802.208. SUBROGATION. If the *executive director* [~~commissioner~~] pays a claim against an auctioneer, the department is subrogated to all rights of the aggrieved party against the auctioneer to the extent of the amount paid to the aggrieved party.

SECTION 26.055. Subsection (b), Section 1901.051, Occupations Code, is amended to read as follows:

(b) The *executive director* [~~commissioner~~] shall issue licenses to applicants who qualify.

SECTION 26.056. Section 1901.151, Occupations Code, is amended to read as follows:

Sec. 1901.151. LICENSE REQUIRED. A person may not act or offer to act as a driller unless the person holds a license issued by the *executive director* [~~commissioner~~] under this chapter and rules adopted under this chapter.

SECTION 26.057. Section 1901.402, Occupations Code, is amended to read as follows:

Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The *executive director* [~~commissioner~~] may bring an action to enjoin a person from violating this chapter.

(b) The *executive director* [~~commissioner~~] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

SECTION 26.058. Section 1901.403, Occupations Code, is amended to read as follows:

Sec. 1901.403. VENUE. The *executive director* [~~commissioner~~] may bring an action in:

- (1) Travis County; or
- (2) the county in which:
 - (A) the offending activity occurred; or
 - (B) the person engaging in the activity resides.

SECTION 26.059. Subsection (b), Section 1901.404, Occupations Code, is amended to read as follows:

(b) At the request of the *executive director* [~~commissioner~~], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 26.060. Section 1902.151, Occupations Code, is amended to read as follows:

Sec. 1902.151. LICENSE REQUIRED. A person may not act or offer to act as an installer unless the person holds a license issued by the *executive director* [commissioner] under rules adopted under this chapter.

SECTION 26.061. Section 1902.402, Occupations Code, is amended to read as follows:

Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The *executive director* [commissioner] may bring an action to enjoin a person from violating this chapter.

(b) The *executive director* [commissioner] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

SECTION 26.062. Section 1902.403, Occupations Code, is amended to read as follows:

Sec. 1902.403. VENUE. The *executive director* [commissioner] may bring an action in:

- (1) Travis County; or
- (2) the county in which:
 - (A) the offending activity occurred; or
 - (B) the person engaging in the activity resides.

SECTION 26.063. Subsection (b), Section 1902.404, Occupations Code, is amended to read as follows:

(b) At the request of the *executive director* [commissioner], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 26.064. Section 2052.053, Occupations Code, is amended to read as follows:

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The *executive director* [commissioner] shall investigate allegations of activity that may violate this chapter.

(b) The *executive director* [commissioner] may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The *executive director* [commissioner] is not required to give advance notice before entering.

SECTION 26.065. Section 2052.102, Occupations Code, is amended to read as follows:

Sec. 2052.102. BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a boxing promoter's license under this chapter must apply on a form furnished by the *executive director* [commissioner].

(b) An application must be accompanied by:

- (1) a license fee in an amount set by the commission; and
- (2) a surety bond:
 - (A) subject to approval by the *executive director* [commissioner]; and
 - (B) conditioned on the applicant's payment of the tax imposed under Section 2052.151.

(c) The *executive director* [commissioner] shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than \$300.

SECTION 26.066. Subsection (a), Section 2052.108, Occupations Code, is amended to read as follows:

(a) An application for a license under Section 2052.107 must be made on a form furnished by the *executive director* [commissioner].

SECTION 26.067. Section 2052.111, Occupations Code, is amended to read as follows:

Sec. 2052.111. DENIAL OF APPLICATION. The *executive director* [commissioner] may deny an application for a license if:

- (1) the applicant does not meet the qualifications for the license; or
- (2) after conducting an investigation and a hearing, the *executive director* [commissioner] determines that the applicant has violated this chapter or a rule adopted under this chapter.

SECTION 26.068. Subsection (b), Section 2052.203, Occupations Code, is amended to read as follows:

(b) The elimination tournament boxing promoter of a local, regional, or championship elimination tournament is not required to require that each elimination tournament contestant wear headgear approved by the department if the promoter under department rules notifies the *executive director* [~~commissioner~~] of the decision not to use the approved headgear.

SECTION 26.069. Section 2052.308, Occupations Code, is amended to read as follows:

Sec. 2052.308. APPEAL. (a) The petitioner or *executive director* [~~commissioner~~] may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The *executive director* [~~commissioner~~] is not required to file an appeal bond.

SECTION 26.070. Subsection (a), Section 2501.053, Occupations Code, is amended to read as follows:

(a) Not later than the 30th day before the date a personnel service begins operating in this state, the owner of the service must file notice with the *executive director* [~~commissioner~~].

SECTION 26.071. Subsection (a), Section 2501.055, Occupations Code, is amended to read as follows:

(a) On receipt of a notice filed under Section 2501.053, the *executive director* [~~commissioner~~] shall issue to the owner a certificate of authority to do business as a personnel service not later than the 15th day after the date the notice is filed if the owner:

- (1) pays the filing fee required for the certificate; and
- (2) complies with the requirements of Section 2501.054.

SECTION 26.072. Section 2501.057, Occupations Code, is amended to read as follows:

Sec. 2501.057. RENEWAL OF CERTIFICATE. The *executive director* [~~commissioner~~] shall issue a renewal of a certificate of authority on the receipt of:

- (1) a renewal notice from the owner that contains the information required by Section 2501.053;
- (2) a renewal fee; and
- (3) security that complies with Section 2501.054.

SECTION 26.073. The heading to Subchapter D, Chapter 2501, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ENFORCEMENT [~~BY COMMISSIONER~~]

SECTION 26.074. Section 2501.151, Occupations Code, is amended to read as follows:

Sec. 2501.151. ENFORCEMENT. (a) The *executive director* [~~commissioner~~] shall enforce Section 2501.102 and may investigate a personnel service as necessary to enforce that section.

(b) The attorney general shall assist the *executive director* [~~commissioner~~] on request.

SECTION 26.075. Subsection (a), Section 2501.253, Occupations Code, is amended to read as follows:

(a) In addition to the amount awarded to a complainant under Section 2501.154(b), the *executive director* [~~commissioner~~] may impose on the personnel service an administrative penalty equal to two times the amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

SECTION 26.076. Subsections (a) and (b), Section 2502.052, Occupations Code, are amended to read as follows:

(a) To obtain a certificate of authority, an owner must:

- (1) file with the *executive director* [~~commissioner~~] a sworn application accompanied by the required application fee; and
- (2) file with the department security that complies with Section 2502.053.

(b) The application must be in the form prescribed by the *executive director* [~~commissioner~~] and include:

- (1) the address of the principal location of the career counseling service;
- (2) the assumed name, if any, under which the career counseling service will operate;
- (3) the name and address of each owner; and
- (4) a statement that the owner has read and is familiar with this chapter.

SECTION 26.077. Subsection (a), Section 2502.053, Occupations Code, is amended to read as follows:

(a) Before the *executive director* [~~commissioner~~] may issue a certificate of authority to an owner, the owner must file with the department a bond in the amount of \$10,000 that is:

- (1) executed by a surety company authorized to do business in this state;
- (2) payable to the state; and
- (3) conditioned on the faithful performance of the owner's obligations under this chapter.

SECTION 26.078. Subsections (a) and (b), Section 2502.054, Occupations Code, are amended to read as follows:

(a) The *executive director* [~~commissioner~~] shall issue a certificate of authority to do business as a career counseling service to an applicant who meets the requirements of this subchapter.

(b) The *executive director* [~~commissioner~~] shall process a certificate application not later than the 15th day after the date the application is filed.

SECTION 26.079. Section 2502.251, Occupations Code, is amended to read as follows:

Sec. 2502.251. ENFORCEMENT. (a) The *executive director* [~~commissioner~~] shall enforce this chapter and may investigate a career counseling service as necessary.

(b) The attorney general shall assist the *executive director* [~~commissioner~~] on request.

SECTION 26.080. Section 2502.301, Occupations Code, is amended to read as follows:

Sec. 2502.301. ADMINISTRATIVE PENALTY. In addition to the amount awarded to a complainant under Section 2502.254(b), the *executive director* [~~commissioner~~] may impose on the career counseling service an administrative penalty equal to two times the amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

SECTION 26.081. Section 7, Article 9035, Revised Statutes, is amended to read as follows:

Sec. 7. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor shall comply with financial security requirements by:

- (1) insuring its vehicle protection products under a reimbursement insurance policy issued by an insurer authorized to engage in the business of insurance in this state or under a surplus lines insurance policy issued by an insurer eligible to place coverage in this state as regulated under *Chapter 981* [~~Article 1.14-2~~], Insurance Code; or
- (2) providing any other form of comparable financial security approved by the *executive director* [~~commissioner~~].

(b) The department may not require any other financial security requirements or financial standards for warrantors.

(c) *Vehicle protection services must abide by the financial responsibility requirements provided by Chapter 686, Transportation Code. The department may coordinate with the Texas Department of Insurance to assure consistency with the standard proof of motor vehicle liability insurance form prescribed by Section 601.081, Transportation Code.*

SECTION 26.082. Section 1.14, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.14. PERSONNEL. The *executive director* [~~commissioner~~] may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this article.

SECTION 26.083. Subsection (e), Section 1.41, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation. An application for a petition seeking an election to disapprove the issuance of a permit must be headed: "Application for Election to Disapprove a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants stating the following: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification, including hail suppression." An application for a petition seeking an election to approve the issuance of a permit shall be headed: "Application for Election to Approve a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear on this petition to see approved the issuance of a permit for weather modification, including hail suppression." On the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, the commissioners court of each county shall call and hold an election. Notice under Chapter 111, Local Government Code, of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this section, notwithstanding Sections 41.004 and 41.0041, Election Code. The petition must be filed with the clerk of each county within 30 days immediately following the first publication of notice. The election must be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the *executive director* [~~commissioner~~] of the date of the election. Except as otherwise provided in this article, elections must be held in accordance with the Election Code.

ARTICLE 27. GENERAL TRANSITION; EFFECTIVE DATE

SECTION 27.001. The changes in law made by this Act regarding the powers and duties of the executive director of the Texas Department of Licensing and Regulation that are transferred to the Texas Commission of Licensing and Regulation do not affect the status of a complaint, investigation, or other proceeding. A rule or form adopted by the executive director before the effective date of this Act remains in effect as a rule or form of the department until amended or changed.

SECTION 27.002. Except as otherwise provided in this Act, this Act takes effect September 1, 2003.

Passed the Senate on May 5, 2003, by a viva-voce vote; May 21, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 16, 2003, by a non-record vote; May 24, 2003, House granted request of the Senate for appointment of Conference Committee; June 1, 2003, House adopted Conference Committee Report by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.